

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) MAY 11, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 28
 DEFENDANT.)
) PAGES 5287 - 5562

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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SAN JOSE, CALIFORNIA

MAY 11, 2022

P R O C E E D I N G S

(COURT CONVENED AT 8:36 A.M.)

(JURY OUT AT 8:36 A.M.)

THE COURT: LET'S GO ON THE RECORD IN THE BALWANI
MATTER.

ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

WE'RE GOING TO HAVE A DISCUSSION ABOUT, LET'S SEE, IT'S
1425 I BELIEVE IT IS.

DOCKET 1425 WAS MR. BALWANI'S MOTION TO COMPEL LIS
EVIDENCE. I'VE READ THAT.

1426 WAS THE GOVERNMENT'S OPPOSITION TO MR. BALWANI'S
MOTION.

1431 WAS MR. BALWANI'S REPLY.

I THINK THAT'S ALL OF THE DOCUMENTS RELATED FOR DISCUSSION
THIS MORNING.

ARE THERE ANY OTHERS, ANY OTHER FILINGS THAT I SHOULD BE
AWARE OF IN REGARDS TO THIS MOTION?

MR. COOPERSMITH: JUST THE DECLARATION ACCOMPANYING
OUR MOTION, YOUR HONOR. YOU PROBABLY HAVE THAT AS WELL.

THE COURT: I DO.

MR. COOPERSMITH: THANK YOU.

THE COURT: ALL RIGHT. LET ME HEAR FROM THE
PARTIES.

08:37AM 1 MR. COOPERSMITH: THANK YOU, YOUR HONOR. AS THE
08:37AM 2 COURT HAS READ, THIS IS A MOTION TO COMPEL CERTAIN DISCOVERY
08:37AM 3 UNDER RULE 16 AND BRADY.

08:37AM 4 AND JUST -- I THINK THE COURT IS VERY FAMILIAR WITH THIS
08:37AM 5 ISSUE FROM PRIOR MOTION PRACTICE, BUT JUST TO JUMP INTO IT,
08:37AM 6 THERE'S A BRADY LETTER THAT THE GOVERNMENT SENT THE DEFENSE ON
08:37AM 7 OCTOBER 29TH, 2020. SO I KNOW THAT THE LETTER IS PHRASED IN
08:37AM 8 TERMS OF, WELL, THE DEFENSE MAY THINK THIS IS BRADY, SO HERE
08:38AM 9 YOU GO.

08:38AM 10 BUT THE GOVERNMENT WAS OBVIOUSLY CONCERNED ENOUGH ABOUT IT
08:38AM 11 THAT THEY THOUGHT THAT THE CONTENT FELL WITHIN THEIR BRADY
08:38AM 12 OBLIGATIONS, SO THEY WROTE A RATHER LENGTHY LETTER.

08:38AM 13 AND WE'RE NOT ASKING FOR -- AS YOU MAY HAVE SEEN IN PRIOR
08:38AM 14 PRACTICE IN CONNECTION WITH THE MOTION TO SUPPRESS, WE'RE NOT
08:38AM 15 ASKING FOR EVERYTHING UNDER THE SUN THAT RELATES TO THIS
08:38AM 16 LETTER.

08:38AM 17 WE'RE SIMPLY ASKING FOR VERY PARTICULAR THINGS REFERENCING
08:38AM 18 CERTAIN PARAGRAPHS IN THE BRADY LETTER, AND THOSE ARE SET FORTH
08:38AM 19 ON THE LAST PAGE OF DOCUMENT 1425 EXACTLY WHAT THOSE NUMBERS
08:38AM 20 ARE.

08:38AM 21 SO WHY ARE WE ENTITLED TO THIS?

08:38AM 22 FIRST OF ALL, AS THE COURT KNOWS, IN THE RULING ON THE
08:38AM 23 MOTION IN LIMINE, THIS IS DOCKET 1326 AT PAGE 39, IT WAS IN THE
08:38AM 24 CONTEXT OF A DIFFERENT MOTION ABOUT COORDINATION WITH
08:38AM 25 JOURNALISTS, BUT THE LANGUAGE THAT THIS COURT USED, AND BASED

08:39AM 1 ON NINTH CIRCUIT LAW, WAS THAT NOTHING IN THIS ORDER, MEANING
08:39AM 2 THE MIL ORDER, IS INTENDED TO PRECLUDE BALWANI FROM PRESENTING
08:39AM 3 EVIDENCE OR ARGUMENT CONCERNING THE DETAILS, THOROUGHNESS OR
08:39AM 4 GOOD FAITH OF THE CRIMINAL INVESTIGATION.

08:39AM 5 AND THAT LANGUAGE THAT THIS COURT USED, THAT'S AT DOCKET
08:39AM 6 1326 AT PAGE 39, IS SQUARELY IN LINE WITH THE NINTH CIRCUIT
08:39AM 7 PRECEDENT ON THIS ISSUE.

08:39AM 8 WHAT IS THAT?

08:39AM 9 SO WE CITED THOSE CASES IN OUR BRIEF. ONE OF THE CASES,
08:39AM 10 OF COURSE, IS CROSBY AND THERE'S THE SUPREME COURT CASE KYLES
08:39AM 11 VERSUS WHITLEY.

08:39AM 12 AND THEN IF YOU LOOK, YOUR HONOR, IN PARTICULAR AT
08:39AM 13 DOCUMENT 1431, THIS IS OUR REPLY BRIEF, AT PAGE 4, WE COLLECT
08:39AM 14 THOSE AUTHORITIES AND THERE'S SOMETHING VERY IMPORTANT THAT I
08:39AM 15 WANT TO NOTE ABOUT THESE, AND THAT IS THAT THOSE CASES DO NOT
08:40AM 16 REQUIRE THAT THE EVIDENCE BE ACTUALLY EXCULPATORY.

08:40AM 17 I KNOW FROM THE COURT'S PRIOR RULINGS THE COURT VIEWED
08:40AM 18 THIS LIS EVIDENCE AS, WELL, IT'S SPECULATIVE. WE'RE NOT SURE
08:40AM 19 WHETHER IT HELPS THE DEFENSE OR HELPS THE GOVERNMENT. IT COULD
08:40AM 20 HELP THE GOVERNMENT, IT COULD HELP THE DEFENSE. WE JUST DON'T
08:40AM 21 KNOW BECAUSE NO ONE HAS IT.

08:40AM 22 THAT DOESN'T MATTER, YOUR HONOR. I WOULD POINT THE COURT
08:40AM 23 IN PARTICULAR TO THE HOWELL CASE THAT WE CITED. THE HOWELL
08:40AM 24 CASE IS 231 F.3D 615, AND THAT'S INSTRUCTIVE FOR THE FOLLOWING
08:40AM 25 REASON: AND HOWELL, WHAT ACTUALLY HAPPENED WAS THE POLICE

08:40AM 1 INVESTIGATION, THERE WERE CERTAIN REPORTS THAT WERE INCORRECT.

08:40AM 2 THE INTERESTING THING ABOUT IT, THOUGH, IS THE INCORRECT
08:40AM 3 NATURE OF THE REPORTS WAS THAT IT SHOWED THAT THE CASH AT ISSUE
08:40AM 4 WAS IN THE POSSESSION OF THE DEFENDANT, THAT WAS REALLY THE
08:40AM 5 TRUTH, AND THE POLICE REPORT SAID IT WAS IN THE POSSESSION OF
08:40AM 6 SOME OTHER PERSON.

08:40AM 7 SO ACTUALLY IF THE REPORTS HAD BEEN CORRECT, THEY WOULD
08:40AM 8 HAVE BEEN INCULPATORY, NOT EXCULPATORY. BUT STILL THE
08:41AM 9 NINTH CIRCUIT IN HOWELL SAID THE DEFENSE STILL SHOULD HAVE
08:41AM 10 GOTTEN THE EVIDENCE BECAUSE EVEN IF IT'S INCULPATORY, IT BEARS
08:41AM 11 ON THE SLOPPINESS AND THOROUGHNESS AND SO FORTH OF THE POLICE
08:41AM 12 INVESTIGATION.

08:41AM 13 I WILL SAY ONE WORD ABOUT THE GOVERNMENT'S ATTEMPT TO
08:41AM 14 DISTINGUISH THESE CASES. I JUST DON'T SEE IT.

08:41AM 15 THEY'VE SAID, WELL, YOU KNOW, THAT WAS THE POLICE, THIS IS
08:41AM 16 THE PROSECUTION.

08:41AM 17 THAT MAKES NO DIFFERENCE UNDER BRADY AND ITS PROGENY,
08:41AM 18 WHETHER WHICH PARTICULAR LAW ENFORCEMENT PERSONNEL OR AGENCY IS
08:41AM 19 INVOLVED, IT'S ALL THE SAME.

08:41AM 20 NOW, GOING A LITTLE BIT FURTHER, YOUR HONOR, THERE'S
08:41AM 21 OBVIOUSLY A FACTUAL DISPUTE ABOUT WHAT THE GOVERNMENT COULD
08:41AM 22 HAVE DONE, IF ANYTHING, ABOUT RESTORING THE LIS.

08:41AM 23 AND WE SAY, THROUGH OUR EXPERT THAT WE'VE PRESENTED, AND
08:41AM 24 THE COURT HAS I THINK REVIEWED HIS DECLARATION, WHICH I BELIEVE
08:41AM 25 IS DOCKET 1158, DOCKET 1158. THROUGH OUR EXPERT, WE CONTEND

08:42AM 1 THAT THE GOVERNMENT COULD HAVE RESTORED THE LIS IF IT HAD
08:42AM 2 SIMPLY FOLLOWED THE ADVICE OF ITS OWN ALS SUPERVISOR AND
08:42AM 3 RECOVERED THE SERVERS.

08:42AM 4 THE GOVERNMENT SAYS THAT'S NOT CORRECT. THEY POINT TO
08:42AM 5 OTHER WITNESSES AND OTHER EVIDENCE THAT THEY SAY IS CONTRARY TO
08:42AM 6 THAT.

08:42AM 7 THE COURT LOOKED AT THESE FACTUAL ISSUES IN THE CONTEXT OF
08:42AM 8 THE MOTION TO SUPPRESS, AND THE COURT IN THAT CONTEXT FOUND
08:42AM 9 THAT WHILE -- RESOLVED THAT FACTUAL DISPUTE IN FAVOR OF THE
08:42AM 10 GOVERNMENT, RIGHT? THAT BASED ON THE 302'S AND THE
08:42AM 11 GOVERNMENT'S REPRESENTATIONS, AND REVIEWING OUR EXPERT'S
08:42AM 12 DECLARATION, THE COURT THOUGHT, WELL, YEAH, I THINK ON BALANCE
08:42AM 13 THE GOVERNMENT IS RIGHT AND I WON'T SUPPRESS THE EVIDENCE.

08:42AM 14 AND THE COURT REMARKED THAT, WELL, AT MOST, MAYBE THE
08:42AM 15 GOVERNMENT WAS NEGLIGENT. IT DIDN'T FIND THAT IT WAS
08:42AM 16 NEGLIGENT, BUT SAID AT MOST THAT COULD BE THE CASE.

08:43AM 17 THAT WHOLE EPISODE, YOUR HONOR, IS INTERESTING FOR THE
08:43AM 18 MOTION TO SUPPRESS.

08:43AM 19 BUT THAT HAS NO BEARING ON THE CURRENT ISSUE, WHICH IS
08:43AM 20 SIMPLY GETTING THE MATERIAL THAT WE'RE ASKING FOR UNDER THESE
08:43AM 21 PARAGRAPHS, BECAUSE AS WE'VE POINTED OUT IN OUR BRIEF, THESE
08:43AM 22 KINDS OF FACTUAL DISPUTES ULTIMATELY ARE FOR THE JURY.

08:43AM 23 AND AS I'VE POINTED TO BASED ON THIS COURT'S RULING AND
08:43AM 24 THE NINTH CIRCUIT PRECEDENT, WE HAVE A RIGHT TO PRESENT THIS
08:43AM 25 DEFENSE IN RELIANCE ON THOSE RULINGS. WE MENTIONED THIS IN

08:43AM 1 OPENING STATEMENT, AND THAT'S CONSISTENT WITH THE LAW.

08:43AM 2 AND THEN ONCE WE PRESENT THE DEFENSE, IT'S GOING TO BE A
08:43AM 3 JURY QUESTION.

08:43AM 4 THE GOVERNMENT IS CERTAINLY FREE TO CALL WITNESSES OR
08:43AM 5 CROSS-EXAMINE OUR WITNESSES TO SAY THAT THEY'RE RIGHT AND THEY
08:43AM 6 COULD HAVE DONE NOTHING, AND WE'LL SAY, WELL, THAT'S NOT THE
08:43AM 7 CASE.

08:43AM 8 SAME AS THESE OTHER CASES WHERE WE'VE GOT, YOU KNOW, OTHER
08:43AM 9 INDICATIONS OF LACK OF THOROUGHNESS OR SLOPPINESS OF POLICE OR
08:43AM 10 OTHER GOVERNMENT INVESTIGATIONS.

08:43AM 11 SO, YOUR HONOR, ONE OF THE OTHER POINTS I THINK THAT IS
08:44AM 12 WORTH MENTIONING IS THAT THE GOVERNMENT HAS SAID, WELL, WE PUT
08:44AM 13 THIS IN A BRADY LETTER, SO THAT'S ALL YOU'RE ENTITLED TO.

08:44AM 14 WELL, THAT'S JUST NOT THE CASE.

08:44AM 15 FIRST OF ALL, IN THEIR OPPOSITION BRIEF, THAT IS DOCKET
08:44AM 16 1426, THE ONLY THING THAT THEY CITE FOR THAT PROPOSITION AT
08:44AM 17 PAGE 9 IS THE JUSTICE MANUAL, THE DEPARTMENT OF JUSTICE'S OWN
08:44AM 18 MANUAL, THAT SAYS IN SOME CASES IT MIGHT BE APPROPRIATE TO PUT
08:44AM 19 SOMETHING IN A LETTER RATHER THAN DISCLOSE THE UNDERLYING
08:44AM 20 EVIDENCE.

08:44AM 21 WELL, IF -- I KNOW WHAT WOULD HAPPEN, BECAUSE I'VE BEEN
08:44AM 22 THERE, WHEN WE CITE THE JUSTICE MANUAL FOR SOMETHING AND WE'RE
08:44AM 23 REMINDED THAT'S NOT LAW AND THAT'S NOT PRECEDENT, AND FOR THEM
08:44AM 24 TO CITE THEIR OWN DEPARTMENT'S MANUAL FOR SOMETHING RATHER THAN
08:44AM 25 CASE LAW I DON'T THINK IS PERSUASIVE.

08:44AM 1 THAT SAID, YOUR HONOR, I THINK WE'RE TALKING ABOUT WHETHER
08:44AM 2 WE GET THE EVIDENCE THAT ACTUALLY UNDERLIES THEIR PARAGRAPH.

08:44AM 3 SO IF THERE'S AN EMAIL COMMUNICATION FROM THEIR ALS
08:45AM 4 SUPERVISOR THAT LAYS OUT WHAT THEY SHOULD DO, IF THERE'S AN
08:45AM 5 EMAIL FROM THAT PERSON, THEY HAVE ALREADY TOLD US THAT THAT
08:45AM 6 EMAIL EXISTS, WE'RE ASKING FOR THE EMAIL, NOT THEIR CRAFTED
08:45AM 7 VERSION OF WHAT HAPPENED IN THEIR LETTER.

08:45AM 8 AND THERE'S NO REASON WE SHOULDN'T GET THAT.

08:45AM 9 FIRST OF ALL, THAT TYPE OF THING IS NOT MENTAL
08:45AM 10 IMPRESSIONS, IT'S NOT PROSECUTION STRATEGY, IT'S NOT THE
08:45AM 11 GOVERNMENT TEAM'S VIEW OF WHAT EVIDENCE THEY SHOULD PRESENT AND
08:45AM 12 WHY AND HOW THEY SHOULD PROSECUTE. IT'S SIMPLY A FACTUAL EMAIL
08:45AM 13 SAYING, YOU KNOW, GO GET THE SUPERVISOR.

08:45AM 14 AND IN ADDITION, YOUR HONOR, THEY HAVE ALREADY PUT IT IN A
08:45AM 15 BRADY LETTER.

08:45AM 16 AND SO FOR THEM TO SAY, WELL, YOU'RE ENTITLED TO THE
08:45AM 17 INFORMATION, WE'RE BASICALLY WAIVING WHATEVER WORK PRODUCT
08:45AM 18 COULD OTHERWISE EXIST, WHICH WE THINK IS NONE, BUT THEY'RE
08:45AM 19 PUTTING IT IN A LETTER, THEN TO SAY, WELL, YOU CAN'T GET THE
08:45AM 20 ACTUAL EMAIL DOESN'T MAKE ANY SENSE.

08:45AM 21 AND, OF COURSE, THERE ARE OTHER PARTS OF THEIR BRADY
08:46AM 22 LETTER, IN PARTICULAR PARAGRAPHS 48, 50, AND 51, THAT ARE
08:46AM 23 ACTUALLY COMMUNICATIONS WITH THIRD PARTIES, SO THERE'S
08:46AM 24 OBVIOUSLY NO WORK PRODUCT THAT APPLIES TO THOSE.

08:46AM 25 SO THE WORK PRODUCT ARGUMENT, YOUR HONOR, IS A RED

08:46AM 1 HERRING. IT DOESN'T APPLY, AND WE SHOULD GET THE UNDERLYING
08:46AM 2 EVIDENCE.

08:46AM 3 THE OTHER THING I'LL SAY ABOUT THAT, YOUR HONOR, IS THAT
08:46AM 4 WHEN WE PRESENT THIS EVIDENCE TO THE JURY, WE SHOULD BE
08:46AM 5 ENTITLED TO PRESENT THE ACTUAL EVIDENCE AND NOT HAVE TO RELY ON
08:46AM 6 THE GOVERNMENT'S BRADY LETTER AS A PIECE OF EVIDENCE, BECAUSE I
08:46AM 7 DON'T THINK THAT IT'S APPROPRIATE FOR THE JURY TO SEE, WELL,
08:46AM 8 THE GOVERNMENT GAVE US THESE DISCLOSURES AND MAYBE THEY WERE
08:46AM 9 BEING, YOU KNOW, LIKE -- THE JURY DOESN'T KNOW ANYTHING ABOUT
08:46AM 10 BRADY OBLIGATIONS OR WHY THE GOVERNMENT WOULD DO SOMETHING LIKE
08:46AM 11 THAT. I THINK THE LAYPERSON DOESN'T UNDERSTAND THAT THE
08:46AM 12 GOVERNMENT HAS CERTAIN OBLIGATIONS.

08:46AM 13 WE THINK WE SHOULD BE ABLE TO PRESENT THE EVIDENCE AND THE
08:46AM 14 ISSUE OF BRADY, AND THE GOVERNMENT DISCLOSING IT SHOULDN'T BE A
08:46AM 15 PART OF THE JURY'S THINKING ON THIS.

08:46AM 16 SO, YOUR HONOR, I THINK THAT'S WHAT REALLY, IN SUM,
08:47AM 17 ENTITLES US TO THIS INFORMATION.

08:47AM 18 AND I JUST WANT TO ALSO POINT OUT IN CLOSING, YOUR HONOR,
08:47AM 19 THAT WE'RE TALKING ABOUT DISCOVERY RIGHT NOW. AND, YOU KNOW,
08:47AM 20 THE GOVERNMENT MAY HAVE ALL SORTS OF OTHER OBJECTIONS TO
08:47AM 21 ADMISSIBILITY OR WHATEVER THEY WANT TO SAY, THEY'RE OBVIOUSLY
08:47AM 22 ENTITLED TO DO THAT, BUT RIGHT NOW WE'RE TALKING ABOUT OUR
08:47AM 23 ABILITY TO GET THIS EVIDENCE, AND THE CASE LAW AND THIS COURT'S
08:47AM 24 PRIOR RULINGS ALLOW US TO DO THAT.

08:47AM 25 THANK YOU.

08:47AM 1 THE COURT: THANK YOU.

08:47AM 2 SO WHAT IS IT YOU WANT? THANK YOU FOR TELLING ME ALL OF
08:47AM 3 THAT. YOU'VE IDENTIFIED THE PARAGRAPHS, PARAGRAPHS IN YOUR
08:47AM 4 1425-3, THERE'S ABOUT FIVE PARAGRAPHS, I THINK, MAYBE SIX, AND
08:47AM 5 YOU SAY THOSE ARE -- MAYBE EIGHT. AND THE BRADY LETTER TELLS A
08:47AM 6 STORY ABOUT THIS LIS, THIS EVIDENCE.

08:47AM 7 AND FOR PURPOSES OF INFORMING ME ABOUT JUST OUR TRIAL AND
08:48AM 8 THE SCHEDULING OF THIS, I'M INTERESTED IN KNOWING, FROM BOTH
08:48AM 9 YOU AND THE GOVERNMENT, WHERE THIS IS GOING TO GO, AND TRYING
08:48AM 10 TO DISCERN IS ONE THING -- ONE THING I'M GOING TO DO THIS
08:48AM 11 MORNING IS TRY TO DISCERN WHAT IS IT THAT YOU WANT, FIRST OF
08:48AM 12 ALL, AND WHAT IS THE NET RESULT OF THAT SUCH THAT WE CAN
08:48AM 13 DISCUSS IT THIS MORNING?

08:48AM 14 AND I RECOGNIZE THAT I'M NOT -- NONE OF THE QUESTIONS THAT
08:48AM 15 I HAVE ARE INTENDED TO REVEAL, NOR AM I ASKING, NOR WILL I
08:48AM 16 PERMIT YOU TO REVEAL ANYTHING ABOUT WHAT YOUR DEFENSE IS. I
08:48AM 17 DON'T WANT TO KNOW THAT, AND IT'S NOT MY QUESTIONS.

08:48AM 18 BUT I DO WANT TO KNOW AS BEST AS I CAN TO BE INFORMED
08:48AM 19 ABOUT THE SCHEDULING AND WHAT IS THIS GOING TO ENTAIL.

08:48AM 20 MR. COOPERSMITH: SURE.

08:48AM 21 THE COURT: SO YOU'VE IDENTIFIED THESE PARAGRAPHS IN
08:48AM 22 THE BRADY LETTER. AND YOU SAY YOU WANT MORE INFORMATION. YOU
08:48AM 23 TALKED A MOMENT AGO ABOUT THE EVIDENCE.

08:49AM 24 DO YOU MEAN THE EMAILS THEMSELVES? IS THAT WHAT YOU WANT?

08:49AM 25 MR. COOPERSMITH: YES, YOUR HONOR, EXACTLY.

08:49AM 1 AND IF YOU GO TO DOCKET 1425-2, WHICH IS MY DECLARATION,
08:49AM 2 THAT'S WHERE WE ATTACH THE EXCERPTS OF THE BRADY LETTER.

08:49AM 3 AND JUST, YOU KNOW, TO GIVE YOU AN EXAMPLE, IN
08:49AM 4 PARAGRAPH 46 THERE'S A DISCUSSION OF WHAT THE ALS SUPERVISOR
08:49AM 5 SAID, RIGHT?

08:49AM 6 AND THEN IT SAYS --

08:49AM 7 THE COURT: IT SAYS -- PARAGRAPH 46 SAYS?

08:49AM 8 MR. COOPERSMITH: YEAH. WELL, IF YOU LOOK AT
08:49AM 9 PARAGRAPH 46, THERE'S A WHOLE -- I WON'T READ IT. THERE'S A
08:49AM 10 LENGTHY DISCUSSION ABOUT WHAT THIS ALS SUPERVISOR ACTUALLY
08:49AM 11 ADVISED THE ATTORNEYS FOR THE GOVERNMENT.

08:49AM 12 AND SO --

08:49AM 13 THE COURT: AND MY QUESTION IS, WHAT DO YOU WANT?

08:49AM 14 MR. COOPERSMITH: SO OUR REQUEST WAS IF THIS IS
08:49AM 15 CAPTURED IN A WRITING, SUCH AS AN EMAIL, WE WANT THE EMAIL.

08:49AM 16 AND IF IT'S NOT, THEN THERE'S NO -- THERE'S NOTHING TO
08:50AM 17 PRODUCE IF THERE'S NO DOCUMENT.

08:50AM 18 BUT THERE ARE OTHER EXAMPLES, YOUR HONOR, WHERE IT
08:50AM 19 ACTUALLY IS DESCRIBED THAT THERE'S AN EMAIL, SO WE WANT THE
08:50AM 20 UNDERLYING EMAIL.

08:50AM 21 THE COURT: OKAY. DON'T -- I JUST WANT TO KNOW WHAT
08:50AM 22 IT IS YOU WANT.

08:50AM 23 MR. COOPERSMITH: THAT'S IT.

08:50AM 24 THE COURT: BECAUSE I'M CURIOUS, WHAT I'D LIKE TO
08:50AM 25 KNOW -- I KNOW YOU'VE GIVEN ME A BROAD -- IN YOUR PLEADINGS,

08:50AM 1 YOU HAVE GIVEN ME A BROAD, AND YOU SAY IT'S A BROAD REQUEST.
08:50AM 2 BUT IT MIGHT BE HELPFUL -- WE MIGHT NOT RESOLVE THIS THIS
08:50AM 3 MORNING. IT MAY BE THAT I'LL TASK BOTH SIDES TO BE A LITTLE
08:50AM 4 MORE SPECIFIC.

08:50AM 5 IF YOU WANT EMAILS FROM THESE PARAGRAPHS, OR TELL ME WHAT
08:50AM 6 IT IS. I RECOGNIZE THAT IT'S A BROAD BRADY LETTER. ONE OF
08:50AM 7 YOUR COLLEAGUES, BEFORE THE CASE WAS SEVERED, SAID HE HAD NEVER
08:50AM 8 SEEN SUCH AN EXPANSIVE BRADY LETTER, I THINK. SO THAT'S JUST
08:50AM 9 HIS OPINION.

08:50AM 10 BUT WHAT I MIGHT NEED FROM YOU, YOU KNOW, IS A LITTLE BIT
08:50AM 11 MORE INFORMATION TO INFORM ABOUT EMAILS. IS THIS GOING TO
08:51AM 12 RESULT IN LIVE TESTIMONY FROM INDIVIDUALS?

08:51AM 13 AND THIS IS PROBABLY FOR THE GOVERNMENT, WHAT DO WE --
08:51AM 14 DEPENDENT ON WHAT INFORMATION COMES OUT, WILL THERE BE THEN A
08:51AM 15 MINI TRIAL, WE'VE USED THAT PHRASE BEFORE, ON THIS PARTICULAR
08:51AM 16 ISSUE?

08:51AM 17 THE LIS IS -- IT'S PART OF THE CASE. YOU'VE CONCEDED THAT
08:51AM 18 IN YOUR PLEADINGS THAT YOU RAISED IT STRATEGICALLY IN YOUR
08:51AM 19 OPENING STATEMENT BECAUSE IT'S PART OF YOUR DEFENSE, AND WHAT
08:51AM 20 IS THE NET RESULT OF THAT?

08:51AM 21 DOES THE LIS COMING INTO EVIDENCE HERE, DOES THAT THEN
08:51AM 22 MEAN THAT ANCILLARY EVIDENCE IS GOING TO COME IN ABOUT ITS
08:51AM 23 CONSTRUCTION? WHO CONSTRUCTED IT? WHO HIRED THE PERSON WHO
08:51AM 24 CONSTRUCTED IT? AND IS THERE ANYTHING WE NEED TO BE CONCERNED
08:51AM 25 ABOUT THAT INFORMATION COMING IN THAT WILL AFFECT THIS TRIAL?

08:52AM 1 AND WE NEED TO CONSIDER THAT. IS THAT PART OF THE MINI
08:52AM 2 TRIAL THAT WE GET INTO ANY RELATIONSHIPS THAT MIGHT EXIST WITH
08:52AM 3 THE CREATOR OF THE LIS? AND IS THAT PERSON, OR PERSONS,
08:52AM 4 WHOEVER THAT GROUP IS, IS THAT GOING TO COME INTO EVIDENCE IN
08:52AM 5 THIS CASE?

08:52AM 6 AND THIS IS MORE FOR SCHEDULING, AND CANDIDLY FOR 403
08:52AM 7 PURPOSES, IS HOW FAR ARE WE GOING TO GO WITH THAT?

08:52AM 8 MR. COOPERSMITH: SURE.

08:52AM 9 THE COURT: THESE ARE BROAD QUESTIONS. I'M NOT
08:52AM 10 GOING TO ASK YOU TO ANSWER RIGHT NOW BECAUSE YOU PROBABLY DON'T
08:52AM 11 HAVE AN ANSWER FOR ME.

08:52AM 12 MR. COOPERSMITH: WELL, I HAVE SOME ANSWERS AND I
08:52AM 13 THINK I CAN PROVIDE SOME GUIDANCE ON THAT AND TRY TO ANSWER THE
08:52AM 14 COURT'S QUESTIONS.

08:52AM 15 THE COURT: SURE.

08:52AM 16 MR. COOPERSMITH: SO, FIRST OF ALL, JUST IN TERMS TO
08:52AM 17 START WITH THE INITIAL QUESTION OF WHAT EXACTLY DO WE WANT?

08:52AM 18 AND IF YOU GO TO THE SAME DECLARATION, WHICH IS DOCKET
08:52AM 19 1425-3, THAT'S THE VERY SHORT LETTER THAT I SENT TO THE
08:52AM 20 GOVERNMENT MAKING THE REQUEST.

08:52AM 21 AND AS THE COURT MIGHT REMEMBER, EARLIER IN THE MOTION TO
08:52AM 22 SUPPRESS CONTEXT, THERE WAS A MUCH BROADER REQUEST. IN FACT,
08:53AM 23 IT WAS MS. HOLMES'S ORIGINAL DRAFT OF THAT AND THEN WE ADOPTED
08:53AM 24 THAT.

08:53AM 25 THIS IS A MUCH MORE NARROW REQUEST. ALL WE'RE ASKING FOR

08:53AM 1 IS COMMUNICATIONS, IF THEY EXIST IN WRITTEN FORM, THAT
08:53AM 2 SPECIFICALLY -- THAT ARE SPECIFICALLY REFERENCED IN CERTAIN
08:53AM 3 PARAGRAPHS.

08:53AM 4 AND WE'VE EVEN CUT THAT DOWN EVEN MORE FOR PURPOSES OF THE
08:53AM 5 MOTION. AND IF YOU GO TO THE LAST PAGE OF DOCKET 1425, YOU'LL
08:53AM 6 SEE THAT WE ONLY HAVE, YOU KNOW, A FEW PARAGRAPHS.

08:53AM 7 SO WE ARE ASKING FOR -- YOU KNOW, MOST PEOPLE COMMUNICATE
08:53AM 8 BY EMAILS THESE DAYS, AND IF SOMEONE IN THE GOVERNMENT SENDS
08:53AM 9 ANOTHER PERSON IN THE GOVERNMENT A LETTER, THAT WOULD BE A
08:53AM 10 COMMUNICATION, BUT PROBABLY IT'S EMAILS.

08:53AM 11 SO IF THERE'S AN EMAIL UNDERLYING ANY OF THE INFORMATION
08:53AM 12 IN THE PARAGRAPHS THAT WE'VE MENTIONED, WHICH ARE NOT THE
08:53AM 13 ENTIRE BRADY LETTER, IT'S JUST VERY SPECIFIC PARTS, WE TRIED TO
08:53AM 14 BE VERY SELECTIVE, WE WANT THE EMAIL.

08:53AM 15 SO THAT'S WHAT WE WANT. OKAY?

08:53AM 16 SO I THINK IT'S NOT AS BROAD AS A BRADY LETTER MIGHT BE.
08:53AM 17 OUR REQUEST IS NOT BROAD.

08:53AM 18 MOVING FORWARD, YOUR HONOR, IN TERMS OF WHERE THIS GOES,
08:54AM 19 FIRST OF ALL, RIGHT NOW WE'RE ASKING FOR THE DISCOVERY. AND AS
08:54AM 20 THE CASE LAW INDICATES, THE PURPOSE OF DISCOVERY IS FOR US TO
08:54AM 21 DECIDE, LIKE, WHAT WE'RE DOING.

08:54AM 22 IN FACT, THERE ARE CASES THAT WE HAVE CITED THAT SAY EVEN
08:54AM 23 IF THE EVIDENCE, LIKE, MAKES THE DEFENSE GO IN A DIFFERENT
08:54AM 24 DIRECTION, THAT'S STILL RULE 16 AND SO FORTH.

08:54AM 25 THE COURT: RIGHT, RIGHT, RIGHT.

08:54AM 1 MR. COOPERSMITH: SO RIGHT NOW IT COULD BE WE GET
08:54AM 2 THESE MATERIALS AND WE SAY, YOU KNOW, HAVING REVIEWED THE
08:54AM 3 MATERIALS, WE'RE NOT PRESENTING A DEFENSE AT ALL. I MEAN, WE
08:54AM 4 CAN MAKE THAT DECISION.

08:54AM 5 THE COURT: I UNDERSTAND THAT. I UNDERSTAND ALL OF
08:54AM 6 THAT.

08:54AM 7 MR. COOPERSMITH: RIGHT.

08:54AM 8 BUT IF WE DO, RIGHT, AND THIS IS NO SECRET BECAUSE WE'VE
08:54AM 9 ALREADY DISCLOSED MR. SONNIER, S-O-N-N-I-E-R, THE EXPERT.

08:54AM 10 IF WE WERE TO GO THAT ROUTE, WE WOULD ANTICIPATE
08:54AM 11 PRESENTING AN EXPERT, MR. SONNIER, WHO WOULD TALK ABOUT THE
08:54AM 12 MICROSOFT SQL SERVER DATABASE SYSTEM AND WHAT HE KNOWS ABOUT
08:54AM 13 THAT, AND HE WOULD LOOK AT THE TERMS THAT ARE AVAILABLE TO HIM.

08:55AM 14 THE COURT: AND I DON'T NEED HIS ENTIRE TESTIMONY
08:55AM 15 RIGHT NOW.

08:55AM 16 MR. COOPERSMITH: SURE.

08:55AM 17 THE COURT: BUT WHAT HE WOULD DO THEN IS WHAT YOUR
08:55AM 18 DESIGN WOULD BE IS TO CHALLENGE THE GOVERNMENT'S
08:55AM 19 REPRESENTATION, OR AT LEAST ONE EMPLOYEE'S REPRESENTATION TO
08:55AM 20 THE TEAM THAT YOU SHOULD GO DO X, AND THEY DIDN'T DO X, AND
08:55AM 21 YOUR EXPERT WOULD SAY THEY SHOULD HAVE DONE X BECAUSE THEY
08:55AM 22 WOULD HAVE HAD IT.

08:55AM 23 AND THEN THE POINT OF THAT IS THEN TO BLAME THE GOVERNMENT
08:55AM 24 FOR NOT -- FOR DESTROYING IT? FOR BEING THE CAUSE OF THE
08:55AM 25 INACCESSIBILITY OF THE LIS? IS THAT THE PURPOSE?

08:55AM 1 MR. COOPERSMITH: RIGHT. IF THEY HAD CONDUCTED A
08:55AM 2 PROPER INVESTIGATION, WHICH IS WHAT THE CASE LAW SAYS WE CAN
08:55AM 3 DO --

08:55AM 4 THE COURT: I UNDERSTAND.

08:55AM 5 MR. COOPERSMITH: -- THEN WE, THEN WE WOULD HAVE HAD
08:55AM 6 EVIDENCE THAT WE CONTEND WOULD ADD TO THE BODY OF EXCULPATORY
08:55AM 7 EVIDENCE.

08:55AM 8 AND THE GOVERNMENT OBVIOUSLY WOULD BE FREE TO SAY, WELL,
08:55AM 9 NO, IT WOULD BE INCULPATORY OR, NO, LIKE MR. SONNIER IS WRONG
08:55AM 10 AND THE GOVERNMENT COULD HAVE DONE ANYTHING.

08:56AM 11 THAT'S ALL FAIR GAME ONCE WE PRESENT THAT EVIDENCE IF WE
08:56AM 12 WERE TO DO THAT.

08:56AM 13 BUT WE ARE GOING INTO -- LIKE, OUR VIEW IS THAT ALL OF THE
08:56AM 14 INFORMATION IN THE LIS WE BELIEVE IS EXCULPATORY, WE WOULD
08:56AM 15 PRESENT THAT CASE, AND THE ISSUES WITH THE GOVERNMENT NOT
08:56AM 16 HAVING OBTAINED IT, IN OUR VIEW WHEN THEY COULD HAVE, IS PART
08:56AM 17 OF THAT PROCESS THAT THE CASE LAW ALLOWS US TO PRESENT.

08:56AM 18 THE COURT: SO HOW MUCH, HOW MUCH OF THE STORY OF
08:56AM 19 THE DESTRUCTION OF THE LIS -- WHICH WAS NOT DONE BY THE
08:56AM 20 GOVERNMENT. I THINK YOU WOULD AGREE WITH THAT.

08:56AM 21 MR. COOPERSMITH: SO, YOUR HONOR --

08:56AM 22 THE COURT: OH, YOU DON'T? YOU DON'T?

08:56AM 23 MR. COOPERSMITH: NO, NO, NO. I WANT TO MAKE SURE I
08:56AM 24 UNDERSTAND THE COURT'S QUESTION.

08:56AM 25 THE COURT: MY QUESTION IS, ARE YOU SAYING THAT THE

08:56AM 1 GOVERNMENT DESTROYED THE LIS WHEN THEY -- THE GOVERNMENT
08:56AM 2 DECOMMISSIONED THE SERVERS?

08:56AM 3 MR. COOPERSMITH: WE KNOW, AND I DON'T THINK IT'S
08:56AM 4 DISPUTED, YOUR HONOR, THAT THE DECOMMISSIONING OF THE SERVERS
08:56AM 5 WAS DONE BY THERANOS.

08:56AM 6 THE COURT: RIGHT.

08:56AM 7 MR. COOPERSMITH: MR. BALWANI WASN'T THERE, RIGHT.

08:57AM 8 THE COURT: SO YOU'RE NOT SAYING THAT THE GOVERNMENT
08:57AM 9 DID THAT?

08:57AM 10 MR. COOPERSMITH: I'M NOT SAYING THAT THE GOVERNMENT
08:57AM 11 DECOMMISSIONED THE SERVERS.

08:57AM 12 THE COURT: RIGHT.

08:57AM 13 MR. COOPERSMITH: BUT IT IS TRUE, AND IT'S IN THE
08:57AM 14 BRADY LETTERS AS WELL --

08:57AM 15 THE COURT: LET ME -- HANG ON. YOU'LL HAVE A
08:57AM 16 CHANCE.

08:57AM 17 MR. COOPERSMITH: SURE, YOUR HONOR. I'M SORRY.
08:57AM 18 PLEASE.

08:57AM 19 THE COURT: FOLLOW MY QUESTIONS, PLEASE.

08:57AM 20 MR. COOPERSMITH: OF COURSE.

08:57AM 21 THE COURT: SO IS PART OF YOUR CASE THEN NOT TO
08:57AM 22 BLAME THE GOVERNMENT FOR DECOMMISSIONING THE SERVERS, BUT WHAT
08:57AM 23 YOU WANT TO CHALLENGE IS BUT FOR THE GOVERNMENT'S LACK OF
08:57AM 24 ATTENTION TO DETAIL, WE WOULD HAVE HAD THE LIS AND THAT WOULD
08:57AM 25 HAVE PERHAPS ALLOWED US TO PROVIDE EXCULPATORY EVIDENCE BECAUSE

08:57AM 1 WE WOULD HAVE THEN BEEN ABLE TO DO SOMETHING MAGICAL WITH THE
08:57AM 2 CONTENTS THAT WOULD HAVE SHOWN THAT THE MACHINES WERE RELIABLE?
08:57AM 3 IS THAT WHAT YOU'RE SAYING?

08:57AM 4 MR. COOPERSMITH: YOUR HONOR, THAT'S ESSENTIALLY
08:57AM 5 RIGHT, JUST WITH A FEW TWEAKS IF I MAY.

08:58AM 6 THE COURT: UH-HUH, SURE.

08:58AM 7 MR. COOPERSMITH: AND THAT IS THAT THIS CASE IS
08:58AM 8 ABOUT, FROM THE GOVERNMENT'S STANDPOINT AS I UNDERSTAND THE
08:58AM 9 CASE AS IT'S UNRAVELED SO FAR, IS THAT THEY'RE SAYING THAT THE
08:58AM 10 TECHNOLOGY, THAT LAB TESTING FOR THAT MATTER, IS UNRELIABLE AND
08:58AM 11 INACCURATE AND THERANOS WAS NOT CAPABLE OF DOING THAT.

08:58AM 12 JUST THE OTHER DAY, JUST THE OTHER DAY WITH MS. BENNETT ON
08:58AM 13 THE STAND, THE GOVERNMENT, AFTER A LITTLE BIT OF AN EVIDENTIARY
08:58AM 14 FIGHT, PRESENTED A DOCUMENT, A PATIENT IMPACT ASSESSMENT
08:58AM 15 DOCUMENT THAT -- WHERE -- YOU HAVE KNOW, IT WAS HEARSAY, BUT IN
08:58AM 16 ANY EVENT, IT CAME IN AS -- THEY ASKED QUESTIONS OF MS. BENNETT
08:58AM 17 ABOUT ISN'T IT THE CASE THAT EVERY -- THAT THERANOS CONCLUDED
08:58AM 18 THAT EVERY SINGLE TEST HAD A POTENTIAL PATIENT IMPACT, RIGHT?
08:58AM 19 AND THAT WAS WITH THE THERANOS DEVICES.

08:58AM 20 BUT AS THE COURT KNOWS, THERE ARE SOMETHING LIKE, YOU
08:58AM 21 KNOW, 9 MILLION TESTS THAT WERE CONDUCTED HERE.

08:58AM 22 IF WE HAD THE LIS, OUR VIEW OF THE WORLD IS THAT WE COULD
08:59AM 23 HAVE DELVED INTO THAT. AS DR. ROSENDORFF SAID, YOU DO AN
08:59AM 24 INVESTIGATION WITH EACH AND EVERY PATIENT AND YOU COULD FIND
08:59AM 25 LOTS OF EXCULPATORY INFORMATION IN THE FORM OF ACCURATE TESTS,

08:59AM 1 OR EVEN --

08:59AM 2 THE COURT: DR. ROSENDORFF SAID THAT?

08:59AM 3 MR. COOPERSMITH: YEAH. HE SAID THAT IF HE GOT A

08:59AM 4 PHYSICIAN INQUIRY -- THIS WAS HIS TESTIMONY -- IF HE GOT A

08:59AM 5 PHYSICIAN INQUIRY, ONE OF THE THINGS HE WOULD DO, HE DIDN'T SAY

08:59AM 6 THE ONLY THING HE WOULD DO, BUT ONE OF THE TOOLS HE WOULD USE

08:59AM 7 IS LIS AND HE WOULD DO AN INVESTIGATION, HE WOULD LOOK AT THE

08:59AM 8 PATIENT TRENDS, HE WOULD LOOK AT THE QC DATA, AND HE WOULD USE

08:59AM 9 THAT IN PART TO HELP DETERMINE WHAT WAS GOING ON, RIGHT?

08:59AM 10 THE COURT: OH, I SEE.

08:59AM 11 MR. COOPERSMITH: AND IT ALSO MIGHT BE THE CASE --

08:59AM 12 THE COURT: HE DIDN'T USE THE WORD "EXCULPATORY."

08:59AM 13 MR. COOPERSMITH: WELL, OF COURSE. HE SAID HE WOULD

08:59AM 14 DO AN INVESTIGATIONS TO DETERMINE -- TO GET TO THE BOTTOM OF

08:59AM 15 THINGS.

08:59AM 16 AND BY THE SAME TOKEN, OUR POSITION IS THAT WE WOULD BE

08:59AM 17 ABLE TO USE IT TO SHOW, IF WE HAD IT -- WELL, LET'S JUST TAKE

08:59AM 18 ONE EXAMPLE, RIGHT?

08:59AM 19 THE COURT: LET ME --

08:59AM 20 MR. COOPERSMITH: SURE, YOUR HONOR.

08:59AM 21 THE COURT: YOU KNOW, THAT'S ANOTHER QUESTION I HAD

09:00AM 22 IS, IS THERE EVIDENCE THAT OBTAINING THE LIS, HAVING THE LIS,

09:00AM 23 BOTH SIDES, IF WE HAD THE LIS, IT COULD DO WHAT YOU SAY IT

09:00AM 24 COULD DO?

09:00AM 25 NOW, I KNOW THERE HAVE BEEN SOME BROAD STATEMENTS.

09:00AM 1 DR. ROSENDORFF TESTIFIED ABOUT ALL OF THE TEST RESULTS GO INTO
09:00AM 2 THIS LIS.

09:00AM 3 AND THEN HE SAID, OH, YEAH, YOU CAN COMPARE -- I THINK THE
09:00AM 4 QUESTIONS WERE, DID YOU THEN PULL BACK THE TESTING DATE AND WHO
09:00AM 5 THE PATIENT WAS, WHAT THE TESTS WERE, AND ALL OF THAT RAW DATA.

09:00AM 6 BUT IS THERE ANY EVIDENCE HOW THAT COMPARISON WOULD TAKE
09:00AM 7 PLACE?

09:00AM 8 IN OTHER WORDS, IS THERE ANY EVIDENCE THAT YOU COULD, FROM
09:00AM 9 THIS INFORMATION, DO A TEST TO SEE -- TO TEST THE ACCURACY
09:00AM 10 OTHER THAN JUST RETRIEVING THE INFORMATION?

09:00AM 11 MAYBE I'M NOT BEING ARTICULATE.

09:00AM 12 MR. COOPERSMITH: I THINK I UNDERSTAND THE COURT'S
09:01AM 13 QUESTION, AND THE ANSWER IS YES.

09:01AM 14 AND THE REASON THE ANSWER IS YES IS THAT, AND JUST
09:01AM 15 STICKING TO DR. ROSENDORFF, ALTHOUGH MS. CHEUNG SAID SOME
09:01AM 16 THINGS ABOUT THIS TOO, AND DR. PANDORI --

09:01AM 17 THE COURT: I'M SORRY. THIS IS ONE THING I MIGHT
09:01AM 18 TASK YOU TO DO. I MIGHT ASK THE PARTIES TO IDENTIFY ON THE
09:01AM 19 RECORD WHERE THAT IS. AND YOU DON'T HAVE TO DO IT RIGHT NOW.
09:01AM 20 DON'T TAKE ME LITERALLY.

09:01AM 21 BUT THIS IS SOMETHING THAT MIGHT BE HELPFUL FOR OUR FUTURE
09:01AM 22 DISCUSSION ON THIS IS, WHAT IN THE RECORD ACTUALLY SAYS THAT
09:01AM 23 THE LIS, AT LEAST WHERE WE HAVE IT NOW AND THESE WITNESSES WHO
09:01AM 24 HAVE TESTIFIED ON THESE, HAVE SAID, YES, YOU CAN ACTUALLY DO AN
09:01AM 25 ANALYSIS OF THIS?

09:01AM 1 MR. COOPERSMITH: YES, YOUR HONOR.

09:01AM 2 THE COURT: AS OPPOSED TO JUST RETRIEVING THE
09:01AM 3 INFORMATION.

09:01AM 4 MR. COOPERSMITH: SURE, YOUR HONOR.

09:01AM 5 THE COURT: RIGHT.

09:01AM 6 MR. COOPERSMITH: AND I CAN CERTAINLY PROVIDE THE
09:01AM 7 COURT AND THE GOVERNMENT WITH A MUCH MORE THOROUGH LIST, BUT
09:01AM 8 FOR THE MOMENT, I'LL JUST POINT THE COURT TO FOOTNOTE 3 IN
09:01AM 9 DOCKET 1425 WHERE WE CITE THE TRANSCRIPT OF THIS TRIAL AT 3599
09:02AM 10 TO 3604, AND THEN WE HAVE A PARENTHETICAL WHERE WE EXPLAIN WHAT
09:02AM 11 THAT IS.

09:02AM 12 AND THERE ARE OTHER -- THAT'S ONE EXAMPLE. THERE ARE
09:02AM 13 OTHER EXAMPLES THAT WE CAN GIVE THE COURT, YOU KNOW, IN A MORE
09:02AM 14 THOROUGH WAY.

09:02AM 15 THE COURT: FOOTNOTE? I'M SORRY.

09:02AM 16 MR. COOPERSMITH: FOOTNOTE 3 ON PAGE 3 OF DOCKET
09:02AM 17 1425.

09:02AM 18 THE COURT: RIGHT. THIS IS WHAT WE JUST SAID -- I
09:02AM 19 JUST SAID. CONFIRMING THE LIS COULD BE USED TO LOOK UP PATIENT
09:02AM 20 RESULT, TREND, DATA, DEVICE, SAMPLE TESTED, AND ALL OF THAT
09:02AM 21 INFORMATION.

09:02AM 22 BUT THAT TELLS US -- PARDON ME FOR USING A SPORTS, YOU
09:02AM 23 KNOW, ANALOGY HERE -- BUT THAT TELLS ME, YEAH, I COULD GO BACK
09:02AM 24 TO THE RECORDS AND FIND OUT HOW MANY AT BATS, HOW MANY STRIKE
09:02AM 25 OUTS, HOW MANY GROUND OUTS TO SECOND BASE AS OPPOSED TO THIRD

09:02AM 1 BASE, HOW MANY HOME RUNS, ET CETERA, ET CETERA. WE CAN GET ALL
09:02AM 2 OF THAT SABER INFORMATION -- YOU KNOW WHAT SABER IS?

09:02AM 3 MR. COOPERSMITH: I DO, YES.

09:02AM 4 THE COURT: AND WE CAN GET ALL OF THAT SABER
09:02AM 5 INFORMATION.

09:02AM 6 BUT SO WHAT? WHAT I HAVEN'T HEARD IS WHERE IS THE
09:03AM 7 INFORMATION IN THE RECORD THAT SAYS WE GET THAT INFORMATION AND
09:03AM 8 WE CAN COMPARE IT WITH ONE PLAYER ON ONE TEAM AND COMPARE THAT
09:03AM 9 TO MANY ANOTHER PLAYER ON ANOTHER TEAM. I'M NOT SURE WE HAVE
09:03AM 10 THAT.

09:03AM 11 MR. COOPERSMITH: FIRST OF ALL, TO STEP BACK, THAT'S
09:03AM 12 NOT THIS MOTION. WE'RE TALKING ABOUT DISCOVERY RIGHT NOW.

09:03AM 13 THE COURT: RIGHT.

09:03AM 14 MR. COOPERSMITH: BUT TO ANSWER THE COURT'S QUESTION
09:03AM 15 AND TO USE THE BASEBALL ANALOGY, WHICH I WOULD LIKE TO DO AS
09:03AM 16 WELL, ALL OF THAT SABER INFORMATION THAT THE COURT REFERENCED,
09:03AM 17 ALL OF THOSE STATS, WHILE LOOKING AT ALL OF THAT, WE CAN
09:03AM 18 DETERMINE WHETHER WE'VE GOT A GOOD TEAM OR NOT. WE CAN
09:03AM 19 DETERMINE SOMETHING ABOUT THAT, RIGHT?

09:03AM 20 THE COURT: HERE COMES THE RELIEF PITCHER COMING
09:03AM 21 BEHIND YOU HERE.

09:03AM 22 MR. COOPERSMITH: THAT'S ALWAYS HELPFUL, YOUR HONOR,
09:03AM 23 EXCEPT WHEN YOU'RE PITCHING A NO HITTER.

09:03AM 24 (LAUGHTER.)

09:03AM 25 THE COURT: YOU'RE SAYING YOU'RE KNOCKING IT OUT OF

09:03AM 1 THE PARK?

09:03AM 2 MR. COOPERSMITH: I ALWAYS GO FOR THAT, YOUR HONOR,
09:03AM 3 SINCE WE'RE ON BASEBALL, RIGHT?

09:03AM 4 THE COURT: YES. WELL, OKAY.

09:04AM 5 MR. COOPERSMITH: SO, YOUR HONOR, WE DO HAVE THAT.

09:04AM 6 AND THE REASON IS, IS THAT WHEN WE HAVE THE GOVERNMENT
09:04AM 7 PRESENTING A PARTICULAR, WE WOULD SAY AN ANECDOTAL CASE, LET'S
09:04AM 8 SAY IT'S A WOMAN WHO SAID SHE GOT AN INACCURATE HCG TEST,
09:04AM 9 RIGHT?

09:04AM 10 WELL, THAT'S UNFORTUNATE FOR THAT INDIVIDUAL. BUT WE
09:04AM 11 WOULD WANT TO KNOW, WHAT ARE THE OTHER PATIENTS WHO ARE ON THAT
09:04AM 12 DAY OR ON THAT WEEK HAD HCG TESTS? AND WHAT DO THOSE RESULTS
09:04AM 13 LOOK LIKE? AND WHAT DO THE TRENDS LOOK LIKE FOR THE MONTH?

09:04AM 14 AND IF WE'RE TALKING ABOUT HDL, FOR EXAMPLE, ONE OF THE
09:04AM 15 FORMS OF CHOLESTEROL, WELL, WE KIND OF KNOW THAT IN THE GENERAL
09:04AM 16 POPULATION, WE SHOULD GET A CERTAIN PERCENTAGE OF PEOPLE WHO
09:04AM 17 HAVE REALLY HIGH HDL OR REALLY LOW HDL, AND ARE WE SEEING SOME
09:04AM 18 SPIKE IN THAT OVER THE MONTH OR THREE MONTHS?

09:04AM 19 AND THIS IS THE TYPE OF THING THAT DR. ROSENDORFF SAID HE
09:04AM 20 WOULD DO TO INVESTIGATE.

09:04AM 21 HE ALSO SAID THAT THERE ARE TIMES WHERE TO REALLY
09:05AM 22 UNDERSTAND WHETHER A PARTICULAR RESULT IS ACCURATE OR NOT, YOU
09:05AM 23 WOULD ALSO HAVE TO KNOW SOMETHING ABOUT THE PATIENT, RIGHT?
09:05AM 24 YOU WOULD HAVE TO GET SOME MEDICAL RECORDS.

09:05AM 25 IF WE KNEW WHO THE PATIENTS WERE AND WE KNEW WHAT WE WERE

09:05AM 1 LOOKING FOR, WE COULD SUBPOENA MEDICAL RECORDS, AND SO COULD
09:05AM 2 THE GOVERNMENT.

09:05AM 3 SO ALL OF THIS IS POTENTIALLY EXCULPATORY, YOUR HONOR.

09:05AM 4 AND I'M NOT GOING TO SAY WE KNOW IT'S EXCULPATORY. IT'S
09:05AM 5 POTENTIALLY EXCULPATORY. THERE ARE WAYS THAT THIS COULD BE
09:05AM 6 USED.

09:05AM 7 FRANKLY, THERE ARE PROBABLY WAYS THAT THE GOVERNMENT COULD
09:05AM 8 ARGUE THAT IT'S INCULPATORY, RIGHT, BUT THAT DOESN'T MATTER.

09:05AM 9 THE COURT: SO HAVE WE GONE FULL CIRCLE THEN? ISN'T
09:05AM 10 THAT WHERE WE ARE NOW?

09:05AM 11 MR. COOPERSMITH: IT DOESN'T EVEN MATTER.

09:05AM 12 THE COURT: BECAUSE I THINK THIS COURT HAS OBSERVED,
09:05AM 13 IN ITS MIL ORDERS AND OTHERS, THAT IT'S JUST AS LIKELY TO BE
09:05AM 14 INCULPATORY IN THE PRESENT STATE BECAUSE WE JUST DON'T KNOW,
09:05AM 15 WHICH AS I UNDERSTAND IS THE BASIS OF YOUR DISCOVERY MOTION,
09:05AM 16 YOU WANT TO KNOW.

09:05AM 17 BUT I THINK IT'S PRETTY CLEAR WE'RE NOT GOING TO KNOW
09:05AM 18 BECAUSE IT DOESN'T EXIST ANYMORE.

09:06AM 19 MR. COOPERSMITH: AND THAT HAS NO BEARING,
09:06AM 20 YOUR HONOR, ON EITHER THE DISCOVERY MOTION, WHICH IS BEFORE THE
09:06AM 21 COURT RIGHT NOW --

09:06AM 22 THE COURT: RIGHT.

09:06AM 23 MR. COOPERSMITH: -- OR ON THE ABILITY TO PRESENT
09:06AM 24 THE DEFENSE, BECAUSE THAT'S JUST A FACTUAL DISPUTE.

09:06AM 25 AND AS WE POINTED OUT, WE, OF COURSE, RESPECT THE COURT'S

09:06AM 1 RULING, BUT THAT DOES NOT BIND THE PARTIES --

09:06AM 2 THE COURT: I --

09:06AM 3 MR. COOPERSMITH: -- IN TERMS OF PRESENTING
09:06AM 4 SOMETHING TO THE JURY.

09:06AM 5 IT'S ALL A FACTUAL ISSUE, WHAT IT MEANS AND WHETHER IT'S
09:06AM 6 EXCULPATORY.

09:06AM 7 THE COURT: SO WHAT YOU WOULD LIKE TO DO IS YOU
09:06AM 8 WOULD LIKE TO BE ABLE TO SAY TO THE JURY, WE WOULD HAVE LIKED
09:06AM 9 TO HAVE PRESENTED THIS EVIDENCE, BECAUSE WE BELIEVE THAT THAT
09:06AM 10 EVIDENCE WOULD HAVE SHOWN SOMETHING DIFFERENT THAN WHAT THE
09:06AM 11 GOVERNMENT ARGUES.

09:06AM 12 WE CAN'T DO THAT BECAUSE FOR SOME REASON THE GOVERNMENT
09:06AM 13 DIDN'T PRESERVE IT, DIDN'T DO ANY OF THIS, AND THEREFORE, IT'S
09:06AM 14 NOT OUR FAULT. MAYBE IT'S THE GOVERNMENT'S FAULT.

09:06AM 15 YOU MIGHT ASK FOR AN INSTRUCTION. WE'RE NOT GOING TO GET
09:06AM 16 INTO THAT RIGHT NOW.

09:06AM 17 BUT THAT'S WHAT YOU WANT TO DO, IT SOUNDS LIKE. YOU WANT
09:07AM 18 TO RAISE THAT IN FRONT IT OF THE JURY.

09:07AM 19 MR. COOPERSMITH: YOUR HONOR, AND JUST TO BE BLUNT
09:07AM 20 FOR A MINUTE, NOT ONLY IS THAT WHAT WE WANT TO DO, UNDER THE
09:07AM 21 NINTH CIRCUIT LAW AND IN LIGHT OF THIS COURT'S RULING, WE ARE
09:07AM 22 ENTITLED TO DO THAT.

09:07AM 23 THE COURT: OKAY.

09:07AM 24 MR. COOPERSMITH: SO THAT'S OUR POINT.

09:07AM 25 THE COURT: YES. I READ YOUR BRIEFING AND YOU CITED

09:07AM 1 THE COURT'S MILS AND THE MOTIONS, AND I THINK YOU WENT A LITTLE
09:07AM 2 BIT BROAD WITH WHAT THE COURT SAID. THE COURT DIDN'T SAY --
09:07AM 3 THE COURT SAID, I RECOGNIZE THE DEFENSE CAN ALWAYS CHALLENGE
09:07AM 4 THE GOVERNMENT'S CASE. THAT'S YOUR JOB, AND I RESPECT THAT,
09:07AM 5 AND WE ALL RESPECT THAT.

09:07AM 6 CHALLENGING THE SUFFICIENCY OF THE EVIDENCE AS TO THE
09:07AM 7 GOVERNMENT'S MEETING THEIR BURDEN IS THE JOB OF THE DEFENSE,
09:07AM 8 AND I OBVIOUSLY RESPECT THAT.

09:07AM 9 BUT MAYBE YOU DIDN'T SAY THIS IN YOUR PLEADINGS, BUT IT
09:07AM 10 SEEMED TO HAVE THE FLAVOR OF, AND THE COURT SAID WE COULD DO
09:07AM 11 THIS. THE COURT HAS ALREADY FOUND THAT WE CAN CHALLENGE THE
09:07AM 12 LIS. THE COURT HAS DONE THIS.

09:08AM 13 AND THAT'S NOT --

09:08AM 14 MR. COOPERSMITH: WELL, YOUR HONOR, I JUST -- YOU
09:08AM 15 KNOW, I'M NOT TRYING TO PLAY GOTCHA HERE, BUT I JUST WANT TO
09:08AM 16 MAKE SURE --

09:08AM 17 THE COURT: THERE'S BEEN A LOT OF THAT.

09:08AM 18 MR. COOPERSMITH: WELL, I DON'T INTEND THAT,
09:08AM 19 YOUR HONOR.

09:08AM 20 I JUST WANT TO MAKE SURE THAT WE'RE CLEAR OF WHAT THE
09:08AM 21 RECORD IS, BECAUSE I NEED TO MAKE A RECORD ON BEHALF OF MY
09:08AM 22 CLIENT.

09:08AM 23 AND THAT IS, AGAIN, AT DOCKET 1326, PAGE 39, THE COURT
09:08AM 24 SAID MORE THAN JUST WE CAN CHALLENGE THE SUFFICIENCY OF THE
09:08AM 25 GOVERNMENT'S CASE.

09:08AM 1 THE COURT SAID THAT "NOTHING IN THIS ORDER IS INTENDED TO
09:08AM 2 PRECLUDE BALWANI FROM PRESENTING EVIDENCE OR ARGUMENT
09:08AM 3 CONCERNING THE DETAILS, THOROUGHNESS, OR GOOD FAITH OF THE
09:08AM 4 CRIMINAL INVESTIGATION."

09:08AM 5 THAT'S THE SPECIFIC LANGUAGE, "NOTHING IN THIS ORDER."
09:08AM 6 AND IN ADDITION, YOUR HONOR, IN OTHER PARTS OF THE
09:08AM 7 ORDER -- AND I'M GOING TO POINT THE COURT IN PARTICULAR TO THE
09:08AM 8 EVIDENCE OF FAULT DISCUSSION IN DOCKET 1326 AT PAGE 21 THROUGH
09:08AM 9 22 -- THE COURT IN THOSE PAGES, PAGES 21 THROUGH 22, TALKS
09:09AM 10 ABOUT THE ABILITY OF THE DEFENSE TO PRESENT THIS EVIDENCE OF
09:09AM 11 FAULT.

09:09AM 12 AND THE COURT NEVER SAID IN THIS DISCUSSION, OH, WE CAN'T
09:09AM 13 DO IT.

09:09AM 14 WHAT THE COURT DID SAY IS THAT PRESENTING THIS TYPE OF
09:09AM 15 EVIDENCE MIGHT OPEN THE DOOR TO SOMETHING, AND WE NEED TO BE
09:09AM 16 PREPARED FOR THAT. WE UNDERSTAND THAT.

09:09AM 17 AND AT SOME POINT, IF APPROPRIATE, WE CAN HAVE A
09:09AM 18 DISCUSSION ABOUT WHAT WE OPENED THE DOOR TO.

09:09AM 19 BUT THAT'S WHAT THE COURT WAS SAYING, NOT THAT WE CAN'T
09:09AM 20 USE THE EVIDENCE AT ALL.

09:09AM 21 SO, YOUR HONOR, WHEN YOU LOOK AT THIS ORDER -- AND, YOU
09:09AM 22 KNOW, I THINK THE COURT WAS JUST FOLLOWING THE LAW HERE, THE
09:09AM 23 NINTH CIRCUIT LAW SAYS THIS, IS THE COURT IS SAYING WE'RE
09:09AM 24 ALLOWED TO PRESENT THIS EVIDENCE OF FAULT BECAUSE NOTHING IN
09:09AM 25 THIS ORDER PREVENTS US FROM, AGAIN, PRESENTING EVIDENCE OR

09:09AM 1 ARGUMENT CONCERNING THE DETAILS, THOROUGHNESS, OR GOOD FAITH OF
09:09AM 2 THE CRIMINAL INVESTIGATION.

09:09AM 3 AND THAT'S WHAT THIS IS, AND THAT'S WHAT HAPPENED IN THESE
09:09AM 4 OTHER CASES.

09:09AM 5 THE COURT: OKAY. I THINK I UNDERSTAND YOUR
09:09AM 6 RELIANCE, YOUR INTERPRETATION OF THE COURT'S WORDS IN THE MIL,
09:10AM 7 SO THAT'S HELPFUL FOR ME TO KNOW HOW YOU READ THINGS.

09:10AM 8 MR. COOPERSMITH: SURE, YOUR HONOR.

09:10AM 9 THE COURT: OKAY.

09:10AM 10 MS. VOLKAR, YOU'VE BEEN PATIENT. WHAT WOULD YOU LIKE TO
09:10AM 11 SAY?

09:10AM 12 MS. VOLKAR: YOUR HONOR, I DON'T HAVE MUCH TO ADD.

09:10AM 13 WE ARE HERE TO TALK ABOUT DISCOVERY. I IMAGINE WE'LL BE
09:10AM 14 BACK UP HERE PROBABLY IN THE NOT TOO DISTANT FUTURE TO DISCUSS
09:10AM 15 THE MERITS JUST BASED ON HOW THIS DISCUSSION IS TRENDING.

09:10AM 16 BUT WE ARE HERE TO TALK ABOUT DISCOVERY, AND THE KEY THING
09:10AM 17 IS THAT THE DEFENSE HAS NOT SHOWN ANY REASON TO DEPART FROM THE
09:10AM 18 COURT'S PRIOR RULINGS DENYING THE EXACT SAME MOTION TO COMPEL
09:10AM 19 NOT JUST THESE DOCUMENTS, BUT A BROADER SUBSET.

09:10AM 20 THEY'RE ESSENTIALLY SAYING, WELL, NOW THAT WE'RE ASKING
09:10AM 21 FOR A NARROWER SUBSET, YOU SHOULD RECONSIDER. AND THE ONLY
09:10AM 22 THING THAT HAS CHANGED IS THEIR OPENING STATEMENT.

09:10AM 23 BUT THE DEFENSE'S DECISION AND TRIAL STRATEGY ABOUT WHAT
09:10AM 24 TO SAY IN THEIR OPENING STATEMENT, ABOUT WHAT TO PROMISE TO THE
09:11AM 25 JURY THE EVIDENCE WILL SHOW, DOES NOT CHANGE THE GOVERNMENT'S

DISCOVERY OBLIGATIONS. IT DOES NOT CHANGE THE COURT'S PRIOR RULINGS ABOUT THOSE DISCOVERY OBLIGATIONS.

WE ARE HERE TO TALK ABOUT DISCOVERY. WE'RE NOT HERE TO TALK ABOUT WHAT CASE THE DEFENSE CAN PRESENT.

THE DEFENSE IN THEIR BRIEFS BLUR THE MERITS OF THOSE TWO THINGS PRETTY HEAVILY.

SO IF WE LOOK AT THE DISCOVERY OBLIGATIONS, THE GOVERNMENT HAS MET THOSE. THE COURT HAS ANALYZED THEM MULTIPLE TIMES BEFORE AND, IN OUR VIEW, CORRECTLY FOUND THAT WE'VE MADE ALL OF THE DISCLOSURE WE NEED TO MAKE, AND NOTHING FURTHER IS REQUIRED OF THE GOVERNMENT.

WE DO NOT NEED TO PROVIDE OUR INTERNAL EMAILS BETWEEN THE ATTORNEYS IN OUR OFFICE AND THE SUPPORT STAFF HELPING US AND DETERMINE HOW TO PROCESS DISCOVERY IN THIS CASE AND ACCESSIBLE DISCOVERY THAT WE RECEIVE FROM THE COMPANY IN THE FALL OF 2018.

THERE ARE SEVERAL OTHER ARGUMENTS THAT I COULD MAKE, AND I KNOW YOUR HONOR HAD QUESTIONS, BUT I REALLY JUST WANTED TO FOCUS ON THE DISCOVERY OBLIGATIONS AND LEAVE THE ARGUMENT ABOUT THE MERITS FOR LATER, UNLESS YOUR HONOR WANTS TO SPEND MORE TIME ON THAT, AND I THINK THE KEY HERE IS THAT THIS IS WHERE THE TIMING BECOMES CRITICAL.

THEY'VE KNOWN ABOUT THIS BRADY LETTER SINCE OCTOBER OF 2020. WE HAVE LITIGATED THIS BEFORE, MANY, MANY MONTHS BEFORE.

THEY GAVE THEIR OPENING STATEMENT, AND THEN THEY SENT THIS LETTER THAT WE'RE CURRENTLY LITIGATING TO THE GOVERNMENT.

09:12AM 1 WHAT DOES THAT SAY? THAT SAYS THAT THE ONLY FACT THAT
09:12AM 2 CHANGED FROM YOUR HONOR'S PRIOR RULING UNTIL NOW WAS THE
09:12AM 3 OPENING STATEMENT.

09:12AM 4 AND THE DEFENSE IS SAYING, NOW THAT WE SAID IT IN OUR
09:12AM 5 OPENING STATEMENT, YOU HAVE TO GIVE US THE EMAILS.

09:12AM 6 THERE'S NO LOGIC THERE. THERE'S NO CASE THAT SAYS THAT.
09:12AM 7 WE'RE NOT STANDING HERE SAYING THAT A DEFENDANT CANNOT
09:12AM 8 CHALLENGE THE THOROUGHNESS OF AN INVESTIGATION.

09:12AM 9 WE AGREE THAT THE NINTH CIRCUIT CASES SHOW A PLETHORA OF
09:13AM 10 EXAMPLES OF SHOWING CHALLENGING THE THOROUGHNESS OF A POLICE
09:13AM 11 INVESTIGATION.

09:13AM 12 I DO THINK THAT THERE'S A DIFFERENCE WHEN THEY'RE TRYING
09:13AM 13 TO GET INTERNAL EMAILS FROM A PROSECUTOR'S OFFICE, AND I ASK
09:13AM 14 YOUR HONOR -- PERHAPS YOU OR THE DEFENSE CAN POINT ME TO ONE.
09:13AM 15 I READ ALL OF THE CASES THAT THEY CITE. I DIDN'T SEE A SINGLE
09:13AM 16 ONE THAT AUTHORIZED DOCUMENTS THAT WERE INTERNAL EMAILS IN A
09:13AM 17 PROSECUTOR'S OFFICE.

09:13AM 18 AND I DO THINK IF THE SITUATION WERE REVERSED, IF WE WERE
09:13AM 19 ASKING FOR EMAILS BETWEEN DEFENSE COUNSEL AND THEIR PARALEGALS
09:13AM 20 ABOUT HOW THEY PROCESSED DISCOVERY, THEY WOULD CERTAINLY BE
09:13AM 21 CLAIMING WORK PRODUCT PROTECTION OVER THAT.

09:13AM 22 SO I THINK FOR THE REASONS STATED IN OUR BRIEF, THIS IS
09:13AM 23 WORK PRODUCT. WE HAVE MET OUR DISCOVERY OBLIGATIONS. THERE'S
09:13AM 24 NO REASON NOW, STANDING HERE TODAY, THAT THE GOVERNMENT'S
09:13AM 25 DISCOVERY OBLIGATIONS ARE ANY DIFFERENT THAN THEY HAVE BEEN FOR

09:13AM 1 THE PAST YEAR AND THE PAST TWO TIMES YOUR HONOR RULED ON THIS
09:13AM 2 EXACT SAME ISSUE, AND THERE'S NO REASON TO COMPEL THE
09:13AM 3 GOVERNMENT TO PROVIDE FURTHER INFORMATION.

09:13AM 4 THE COURT: OKAY. THANK YOU.

09:14AM 5 MR. COOPERSMITH: YOUR HONOR, JUST TO RESPOND TO A
09:14AM 6 FEW POINTS THAT MS. VOLKAR MADE.

09:14AM 7 FIRST OF ALL, I THINK WHAT THE GOVERNMENT HAS DONE IN
09:14AM 8 THEIR BRIEFING, AND I THINK IN PART OF MS. VOLKAR'S COMMENTS,
09:14AM 9 IS THAT THEY'RE BLURRING AND MISSING THE ISSUE OF FACTUAL
09:14AM 10 DISPUTES ABOUT WHAT THIS EVIDENCE MEANS AND WHAT THEY COULD
09:14AM 11 HAVE DONE OR COULDN'T HAVE DONE WITH WHAT, FIRST OF ALL, WE'RE
09:14AM 12 ALLOWED TO GET IN DISCOVERY, AND SECOND, WHAT WE MAY BE
09:14AM 13 ALLOWED, IF WE SO CHOOSE, TO PRESENT TO THE JURY.

09:14AM 14 I THINK THESE ARE TWO DIFFERENT THINGS, AND ARGUING THE
09:14AM 15 FACTS ABOUT WHETHER THE WITNESSES THEY INTERVIEWED ARE RIGHT OR
09:14AM 16 WHETHER MR. SONNIER IS RIGHT DOESN'T HAVE ANY BEARING ON THE
09:14AM 17 CURRENT MOTION, OR EVEN ON FACTUAL DISPUTE THAT MIGHT BE SET UP
09:14AM 18 FOR THE JURY.

09:14AM 19 SECOND, I THINK THE GOVERNMENT'S POSITION IS UNTENABLE IN
09:14AM 20 THE SENSE THAT THEY CHOSE, THEY THOUGHT IT WAS NECESSARY FOR
09:14AM 21 THEM TO WRITE A BRADY LETTER TELLING US THE THINGS THAT THEY
09:14AM 22 TOLD US ABOUT WHAT HAPPENED.

09:14AM 23 AND THAT'S GREAT THAT THEY WROTE IT. WE COMMEND THEM FOR
09:14AM 24 IT.

09:14AM 25 BUT WE SHOULD NOT BE THEN LIMITED TO THEIR DESCRIPTION OF

09:15AM 1 EMAILS THAT EXIST. WE SHOULD BE ABLE TO GET THE ACTUAL EMAILS.

09:15AM 2 SOME OF THEM ARE, AS I POINTED OUT EARLIER, WITH THIRD
09:15AM 3 PARTIES, LIKE THE DORSEY & WHITNEY FIRM THAT REPRESENTED THE
09:15AM 4 ASSIGNEE AT THERANOS, ESSENTIALLY LIKE A RECEIVERSHIP.

09:15AM 5 THOSE COMMUNICATIONS ARE NOT WORK PRODUCT.

09:15AM 6 AND BY THE SAME TOKEN, EVEN THE EMAILS FROM THEIR OWN
09:15AM 7 PERSONNEL WHERE IT'S JUST SAYING, WE SHOULD GET THE SERVERS,
09:15AM 8 THESE ARE NOT MENTAL IMPRESSIONS. THERE'S NOTHING LIKE THAT.

09:15AM 9 AND THAT KIND OF GOES TO THE LAST POINT THAT I WANT TO
09:15AM 10 ADDRESS FROM MS. VOLKAR'S COMMENTS, AND THAT IS THIS
09:15AM 11 DISTINCTION THAT THE GOVERNMENT CONTINUES TO MAKE BETWEEN
09:15AM 12 POLICE INVESTIGATIONS AND PROSECUTION.

09:15AM 13 SO LET ME JUST PRESENT THIS BRIEF HYPOTHETICAL TO THE
09:15AM 14 COURT. THE POLICE OR THE FBI OR THE POSTAL INSPECTION SERVICE,
09:15AM 15 ANY OF THESE AGENCIES, THEY CAN HAVE PEOPLE THAT DEAL WITH
09:15AM 16 FORENSICS AS WELL. SO WHEN YOU'RE INVESTIGATING A FORENSIC
09:15AM 17 ISSUE OR A DATABASE ISSUE LIKE THE LIS, YOU COULD HAVE
09:16AM 18 PERSONNEL WHO WORK FOR THE POLICE DEPARTMENT OR WORK FOR THE
09:16AM 19 FBI OR THE POSTAL SERVICE. YOU COULD HAVE THOSE PEOPLE DOING
09:16AM 20 THE WORK, AND THEN THE GOVERNMENT WOULDN'T HAVE THAT ARGUMENT,
09:16AM 21 RIGHT, BECAUSE THEY WOULD HAVE, WELL, IT'S A POLICE
09:16AM 22 INVESTIGATION.

09:16AM 23 THE FACT THAT THEY CHOSE, IN THE STRUCTURE THAT THEY SET
09:16AM 24 UP, TO HAVE AN ALS SUPERVISOR OR A PARALEGAL, YOU KNOW, DO WORK
09:16AM 25 THAT THE POLICE OR THE FBI COULD JUST AS WELL DO, THAT HAS NO

09:16AM 1 BEARING ON THE ISSUES HERE.

09:16AM 2 SO THIS IS A DISTINCTION THAT MAKES NO DIFFERENCE, AND
09:16AM 3 THERE'S NO LOGICAL REASON WHY THE FACT THAT WE'RE TALKING ABOUT
09:16AM 4 COMMUNICATIONS FROM A GOVERNMENT DOJ EMPLOYEE VERSUS AN FBI
09:16AM 5 EMPLOYEE, WHY THAT WOULD MAKE ANY DIFFERENCE HERE.

09:16AM 6 SO I THINK THE GOVERNMENT DISCLOSED THESE THINGS. WE WANT
09:16AM 7 THE ACTUAL EVIDENCE. WE WANT TO MAKE SURE OUR EXPERT, IF WE SO
09:16AM 8 CHOOSE TO USE HIM, AND THE JURY SEES THE ACTUAL EVIDENCE, NOT
09:16AM 9 THE GOVERNMENT'S DESCRIPTION OF IT.

09:16AM 10 I'M NOT ACCUSING THE GOVERNMENT OF BEING DISHONEST. THEY
09:17AM 11 WROTE DOWN THE BRADY LETTER.

09:17AM 12 BUT THERE'S ALWAYS A DIFFERENCE BETWEEN VERY GOOD LAWYERS
09:17AM 13 WHO ARE CRAFTING SOMETHING TO TRY TO MEET THEIR OBLIGATIONS AND
09:17AM 14 GETTING THE ACTUAL EVIDENCE.

09:17AM 15 AS I SAID BEFORE, THAT'S THE EVIDENCE THAT WE SHOULD BE
09:17AM 16 ABLE TO PRESENT TO THE JURY, NOT, OH, WE'RE RELYING ON A
09:17AM 17 GOVERNMENT LETTER AND GET INTO THAT REAL CAN OF WORMS WITH THE
09:17AM 18 JURY AS TO WHY DO WE HAVE A GOVERNMENT LETTER.

09:17AM 19 THE COURT: SO IT'S THE EMAILS RELATED TO THE
09:17AM 20 PARAGRAPHS IN YOUR MOTION?

09:17AM 21 MR. COOPERSMITH: THE SPECIFIC PARAGRAPHS THAT WE
09:17AM 22 IDENTIFIED ON THE LAST PAGE OF DOCKET 1425, AND THAT'S IT,
09:17AM 23 YOUR HONOR.

09:17AM 24 THE COURT: HANG ON A SECOND. 1425?

09:17AM 25 MR. COOPERSMITH: YES, YOUR HONOR.

09:17AM 1 THE COURT: AT LINE 8?

09:17AM 2 MR. COOPERSMITH: LET ME CHECK THAT, YOUR HONOR.

09:17AM 3 HANG ON.

09:17AM 4 YES, IT'S LINE 8.

09:17AM 5 THE COURT: AND IT'S THE EMAILS RELATED TO THOSE

09:17AM 6 PARAGRAPHS?

09:17AM 7 MR. COOPERSMITH: YES, YOUR HONOR.

09:17AM 8 THE COURT: ALL RIGHT. THANK YOU.

09:17AM 9 MS. VOLKAR, ANYTHING FURTHER ON THIS?

09:17AM 10 MS. VOLKAR: YOUR HONOR, I'M HAPPY TO ANSWER

09:18AM 11 QUESTIONS.

09:18AM 12 I DO HAVE THE CASE CITE FOR THE POLICE VERSUS THE

09:18AM 13 PROSECUTION DISTINCTION IF YOU WOULD LIKE IT.

09:18AM 14 THE COURT: SURE. SURE.

09:18AM 15 MS. VOLKAR: SO IN THE NINTH CIRCUIT CASE

09:18AM 16 UNITED STATES VERSUS SELLERS, 906 F.3D 848, NINTH CIRCUIT 2018

09:18AM 17 OPINION AT PINCITE 852 TO 853.

09:18AM 18 THE NINTH CIRCUIT IN THE DISCOVERY DISPUTE -- THIS IS IN

09:18AM 19 THE CONTEXT OF THE SELECTIVE PROSECUTION, SELECTIVE

09:18AM 20 ENFORCEMENT -- TALKS ABOUT THE ARMSTRONG DECISION AND WHY THE

09:18AM 21 MENTAL PROCESSES OF PROSECUTORS ARE REALLY IN A DIFFERENT

09:18AM 22 CATEGORY THAN WHAT AGENTS AND LAW ENFORCEMENT DO WHEN THEY'RE

09:18AM 23 INVESTIGATING THE CASE.

09:18AM 24 SO THERE IS SUPPORT FOR THAT, AND I DID NOT SEE A CITE TO

09:18AM 25 THE CONTRARY IN MY COLLEAGUE'S BRIEFS.

09:18AM 1 THE COURT: OKAY.

09:18AM 2 MR. COOPERSMITH: YOUR HONOR, JUST TO BRIEFLY
09:18AM 3 ADDRESS THAT.

09:18AM 4 I JUST GOT THE CITE, THAT'S NOT IN THEIR BRIEF, AND SO
09:18AM 5 I'LL CERTAINLY LOOK AT THE SELLERS CASE. THIS WAS NOT
09:19AM 6 SOMETHING CITED IN THE GOVERNMENT'S BRIEF.

09:19AM 7 IT DOES APPARENTLY RELY ON ARMSTRONG, ACCORDING TO
09:19AM 8 MS. VOLKAR, AND I AM FAMILIAR WITH THAT CASE.

09:19AM 9 AND I WILL JUST SAY ONE WORD ABOUT THIS ISSUE OF SELECTIVE
09:19AM 10 PROSECUTION.

09:19AM 11 WHEN YOU'RE GETTING INTO THAT WHERE YOU'RE TRYING TO SAY,
09:19AM 12 WELL, THE GOVERNMENT HAS PROSECUTED MY CLIENT, LIKE IN
09:19AM 13 ARMSTRONG I THINK IT WAS BECAUSE THE FACTS WERE THEY WERE
09:19AM 14 PROSECUTING THIS DEFENDANT THAT WAS AFRICAN AMERICAN, BUT THEY
09:19AM 15 DIDN'T PROSECUTE ALL OF THESE OTHER PEOPLE, NOW YOU'RE GETTING
09:19AM 16 INTO GOVERNMENT PROSECUTORIAL DISCRETION AND WHAT IS IT THAT
09:19AM 17 MAKES THEM PROSECUTE ONE PERSON OR THE OTHER?

09:19AM 18 THOSE ARE CORE WORK PRODUCT ISSUES, AND THAT HAS NOTHING
09:19AM 19 TO DO WITH A FACTUAL ISSUE, SOMEONE SAYS GET A SERVER, THAT
09:19AM 20 WOULD BE A GOOD THING TO DO.

09:19AM 21 THESE SELECTIVE PROSECUTION CASES, AS WE POINTED OUT IN
09:19AM 22 OUR REPLY BRIEF, HAVE NO BEARING ON THE ISSUES BECAUSE THOSE
09:19AM 23 ARE NOT RELATED TO THE CASE AT HAND. THEY'RE, WELL, WHAT ABOUT
09:19AM 24 SOME OTHER CASE WHERE THE GOVERNMENT DECIDED TO PROSECUTE
09:20AM 25 SOMEONE ELSE OR NOT PROSECUTE SOMEBODY ELSE?

09:20AM 1 SO I DON'T THINK THOSE CASES MEAN ANYTHING, AND THEY
09:20AM 2 CERTAINLY DON'T MEAN ANYTHING IN TERMS OF WHAT WE SAY IS A
09:20AM 3 MEANINGLESS DISTINCTION BETWEEN THE POLICE AND PROSECUTION, WHO
09:20AM 4 WORKS FOR WHICH AGENCY.

09:20AM 5 THE COURT: OKAY. THANK YOU.

09:20AM 6 SECONDARILY, STILL ON THE DISCOVERY ASPECT, IT SEEMS LIKE
09:20AM 7 IF THE COURT IS GOING TO REVIEW THIS FOR THE REQUEST THAT YOU
09:20AM 8 MADE, PERHAPS THE COURT SHOULD LOOK AT DOCUMENTS IN CAMERA
09:20AM 9 BEFORE IT MAKES ANY RELEASE AND DETERMINES WHAT IS APPROPRIATE.

09:20AM 10 WOULD YOU OBJECT TO THAT PROCEDURE?

09:20AM 11 MR. COOPERSMITH: NO, YOUR HONOR. IF THE COURT
09:20AM 12 WANTS TO DO THAT, YOU COULD LOOK AT THAT.

09:20AM 13 I SUPPOSE THE EXERCISE FOR THE COURT WOULD BE TO LOOK AT
09:20AM 14 WHETHER, YOU KNOW, IT REVEALS SOME KIND OF PROSECUTORIAL
09:20AM 15 STRATEGY THAT WOULD BE IN THE REALM OF WORK PRODUCT. I SUPPOSE
09:20AM 16 THAT WOULD BE THE POINT.

09:20AM 17 IS THAT RIGHT, YOUR HONOR?

09:20AM 18 THE COURT: WHAT WOULD THE POINT BE, MS. VOLKAR, IF
09:20AM 19 THE COURT WERE TO REVIEW IN CAMERA DOCUMENTS FROM THE
09:21AM 20 GOVERNMENT?

09:21AM 21 MS. VOLKAR: YOUR HONOR, I'M HESITANT TO TASK THE
09:21AM 22 COURT WITH MORE WORK, PARTICULARLY WHEN WE HAVE THE SUBSTANCE
09:21AM 23 OF WHAT -- AND THIS IS WHY THE DEFENSE IS ABLE TO BRING THIS
09:21AM 24 MOTION. WE HAVE THE SUBSTANCE OF WHAT THOSE DOCUMENTS WOULD
09:21AM 25 SHOW. THE INFORMATION IS IN THE GOVERNMENT'S OCTOBER 2020

09:21AM 1 LETTER AT THE PARAGRAPHS IDENTIFIED.

09:21AM 2 ALL THEY'RE ASKING FOR IS THE UNDERLYING EMAILS, I PRESUME
09:21AM 3 SO THAT THEY COULD TRY TO PRESENT IT TO THEIR EXPERT OR TO SOME
09:21AM 4 OTHER WITNESS ON THE STAND. AGAIN, I'M TRYING NOT TO GO INTO
09:21AM 5 THE MERITS RIGHT NOW.

09:21AM 6 WE KNOW WHAT THE SUBSTANCE OF THOSE DOCUMENTS ARE AND WHY
09:21AM 7 THEY WANT THEM, BECAUSE THEY'RE IN THE GOVERNMENT'S
09:21AM 8 OCTOBER 2020 LETTER.

09:21AM 9 SO I'M HESITANT -- OR I FAIL TO SEE HOW PROVIDING
09:21AM 10 ADDITIONAL DOCUMENTATION TO THE COURT IN CAMERA WILL MOVE THE
09:21AM 11 NEEDLE ON DECIDING WHETHER OR NOT THESE MATERIALS ARE WORK
09:21AM 12 PRODUCT.

09:21AM 13 THE COURT: I'M NOT GETTING AHEAD OF MYSELF.
09:21AM 14 PERHAPS I AM, THOUGH.

09:21AM 15 BUT IF THE COURT WERE TO SAY, WELL, MAYBE MR. COOPERSMITH
09:22AM 16 IS IN THE NINTH INNING AND HE'S PITCHING A NO HITTER AND HE'S
09:22AM 17 GOING TO COMPLETE THAT, AND MAYBE I WILL ORDER THAT THAT BE
09:22AM 18 REVEALED.

09:22AM 19 SHOULD I LOOK AT THOSE BEFORE? MY COMFORT LEVEL WOULD BE
09:22AM 20 GREATER IF I DID HAVE AN OPPORTUNITY TO REVIEW AN EMAIL JUST TO
09:22AM 21 MAKE SURE THAT THERE'S NOTHING THAT YOU MIGHT WISH TO -- OR IF
09:22AM 22 YOU WANT TO CHALLENGE ANYTHING THAT YOU'VE INDICATED IN YOUR
09:22AM 23 PLEADINGS IN REGARDS TO ANY TYPE OF PRIVILEGES AND THOSE TYPES
09:22AM 24 OF THINGS.

09:22AM 25 I JUST THROW THAT OUT THERE.

09:22AM 1 I'M NOT SUGGESTING THAT I'VE MADE A DECISION ON THIS, BUT
09:22AM 2 I'M JUST TRYING TO FORECAST AHEAD, LIKE, WHERE ARE WE GOING
09:22AM 3 WITH THIS?

09:22AM 4 AND THEN I WANT TO MOVE TO A MERITS DISCUSSION, WHICH IS
09:22AM 5 NOT RELATED TO AND WILL NOT BE RELATED TO THE COURT'S DECISION
09:22AM 6 ON THE DISCOVERY ISSUE, BUT I THINK IT IS FAIR TO INFORM THE
09:22AM 7 COURT AS TO WHAT DOES THIS DO TO OUR SCHEDULE AND THOSE THINGS.

09:22AM 8 MS. VOLKAR: YOUR HONOR, THE GOVERNMENT'S POSITION
09:22AM 9 IS THAT THE DEFENSE HAS NOT SHOWN THAT THEY ARE ENTITLED TO
09:23AM 10 THIS DISCOVERY. THEY ARE NOT ENTITLED TO ANYTHING FURTHER IN
09:23AM 11 THE INFORMATION.

09:23AM 12 IF THE COURT IS INCLINED, WE WOULD PREFER TO PROVIDE THE
09:23AM 13 DOCUMENT IN CAMERA BEFORE MAKING A FURTHER PRODUCTION. THAT
09:23AM 14 WOULD BE OUR ALTERNATIVE ARGUMENT.

09:23AM 15 BUT I DO THINK, FOR THE REASONS STATED IN OUR BRIEF, THAT
09:23AM 16 THE COURT WOULD BE WELL WITHIN THE CASE LAW TO DENY THIS
09:23AM 17 OUTRIGHT FOR THE REASONS THAT IT HAS IN THE PAST.

09:23AM 18 THE COURT: SO LET'S PUT THAT ASIDE FOR A MOMENT.

09:23AM 19 I DO WANT TO TALK A LITTLE BIT ABOUT, NOT NECESSARILY
09:23AM 20 MERITS, BUT SCHEDULING, AND WHERE DO WE ANTICIPATE -- AND
09:23AM 21 AGAIN, I WANT TO SEPARATE THIS DISCUSSION FROM THE COURT'S
09:23AM 22 DECISION MAKING ON THE MOTION. THEY'RE TWO SEPARATE THINGS AND
09:23AM 23 THEY'RE NOT GUIDED BY ONE OR THE OTHER.

09:23AM 24 BUT I DO THINK IT'S APPROPRIATE FOR THE COURT TO LOOK AND
09:23AM 25 SEE, WHAT DOES THIS PORTEND FOR SCHEDULING, IF ANYTHING? IT

09:24AM 1 MIGHT NOT CHANGE ANYTHING.

09:24AM 2 MR. COOPERSMITH: YOUR HONOR, OBVIOUSLY I DON'T KNOW
09:24AM 3 WHAT THE GOVERNMENT PLANS FOR THE REST OF THEIR CASE. I HAVE
09:24AM 4 THEIR SECOND HALF WITNESS LIST, SO I HAVE A SENSE OF WHAT THE
09:24AM 5 UNIVERSE OF WITNESSES ARE.

09:24AM 6 THE GOVERNMENT COULD GIVE AN ESTIMATE, PERHAPS, OF HOW
09:24AM 7 LONG THEY THINK THEIR CASE IS GOING TO GO ON UNTIL THEY REST.

09:24AM 8 BUT WHAT I THINK THE COURT IS ASKING IS, WHAT WOULD HAPPEN
09:24AM 9 IF THE DEFENSE PRESENTED A CASE?

09:24AM 10 AS I SAID, WE DON'T KNOW IF WE WILL PRESENT A CASE. PART
09:24AM 11 OF THE REASON FOR DISCOVERY IS SO WE CAN MAKE THOSE KINDS OF
09:24AM 12 DECISIONS.

09:24AM 13 SO I WILL HONOR OUR AGREEMENT WITH THE GOVERNMENT TO GIVE
09:24AM 14 THEM, YOU KNOW, THE SO-CALLED "THURSDAY NIGHT LIST" AND ALL OF
09:24AM 15 THAT WHEN THE TIME COMES FOR THAT.

09:24AM 16 OBVIOUSLY AT SOME POINT I EXPECT THAT THEY WILL TELL ME
09:24AM 17 THAT THEY'RE RESTING AT A CERTAIN POINT AND THEN WE'LL START
09:24AM 18 TALKING ABOUT THOSE ISSUES.

09:24AM 19 IF WE DO PUT ON A CASE, I'M NOT SURE THAT THIS ISSUE WOULD
09:24AM 20 NECESSARILY DELAY THINGS INORDINATELY, BUT OBVIOUSLY WHEN YOU
09:25AM 21 PUT ON A WITNESS THERE'S SOME TIME REQUIRED.

09:25AM 22 BUT WE HAVE AN EXPERT.

09:25AM 23 I DON'T KNOW WHAT THE GOVERNMENT IS GOING TO DO. THEY
09:25AM 24 COULD POTENTIALLY CALL SOME WITNESSES.

09:25AM 25 THE COURT: RIGHT. AND, AGAIN, I'M NOT ASKING YOU

09:25AM 1 TO REVEAL, OBVIOUSLY, AND YOU MAY NOT HAVE DECIDED, SO YOU
09:25AM 2 CAN'T.

09:25AM 3 MR. COOPERSMITH: YEAH.

09:25AM 4 THE COURT: BUT YOU HAVE USED YOUR EXPERT'S NAME
09:25AM 5 THREE OR FOUR TIMES THIS MORNING.

09:25AM 6 MY SENSE IS THAT WE SHOULD EXPECT AT A MINIMUM, I'M NOT
09:25AM 7 ASKING YOU TO CONFIRM, BUT THERE MIGHT BE EXPERT TESTIMONY
09:25AM 8 REGARDING THE LIS AND THAT, AND THEN THE GOVERNMENT MIGHT BE
09:25AM 9 COMPELLED TO ANSWER, RESPOND.

09:25AM 10 MR. SCHENK.

09:25AM 11 MR. SCHENK: YES, YOUR HONOR. THANK YOU.

09:25AM 12 I RISE JUST TO SPEAK ON THE SCHEDULING ISSUES THAT THE
09:25AM 13 COURT HAS INDICATED --

09:25AM 14 THE COURT: RIGHT.

09:25AM 15 MR. SCHENK: -- IT WOULD LIKE TO HEAR FURTHER
09:25AM 16 COMMENT ON.

09:25AM 17 YOUR HONOR, I THINK AT THE END OF COURT TODAY, THE
09:25AM 18 GOVERNMENT WILL PROBABLY BE IN A POSITION TO INFORM THE COURT
09:25AM 19 THAT WE MAY NOT HAVE ENOUGH WITNESSES REMAINING TO FILL NEXT
09:25AM 20 WEEK.

09:25AM 21 SO WE HAVE 9:00 TO 4:00, OR THEREABOUTS, TODAY, FRIDAY,
09:26AM 22 AND I BELIEVE THREE DAYS NEXT WEEK THAT WOULD MIRROR THIS WEEK,
09:26AM 23 9:00 TO 4:00, TUESDAY, WEDNESDAY, AND FRIDAY.

09:26AM 24 AND AT ABOUT THE PACE THAT WE'RE GOING, I THINK THAT THERE
09:26AM 25 MIGHT NOT BE ENOUGH WITNESSES LEFT ON THE GOVERNMENT'S PLAN OR

09:26AM 1 SCHEDULE TO FILL THE WEEK.

09:26AM 2 AND AS A RESULT, WHAT MR. COOPERSMITH JUST REFERENCED,
09:26AM 3 THAT IS, THE THURSDAY NIGHT DISCLOSURES, WE WILL EXPECT THAT
09:26AM 4 THE DEFENSE WILL PROVIDE TO US TOMORROW EVENING BY 7:00 O'CLOCK
09:26AM 5 THEIR WITNESSES, WHO THEY INTEND TO CALL, BECAUSE I THINK
09:26AM 6 THERE'S A GOOD CHANCE THAT THE DEFENSE IS GOING TO HAVE TO PUT
09:26AM 7 WITNESSES ON TOWARDS THE END OF NEXT WEEK.

09:26AM 8 THE COURT: I SEE.

09:26AM 9 MR. SCHENK: THERE IS ONE ISSUE THAT I SHOULD INFORM
09:26AM 10 THE COURT ABOUT, AND THAT IS ONE OF THE WITNESSES THAT WE
09:26AM 11 DISCLOSED TO THE DEFENSE THAT MAY TESTIFY THIS WEEK TESTED
09:26AM 12 POSITIVE FOR COVID THIS MORNING.

09:27AM 13 THAT WITNESS IS, THEREFORE, NOT GOING TO TESTIFY THIS
09:27AM 14 WEEK.

09:27AM 15 I REVIEWED THE CDC ADVICE OR GUIDELINES ON THIS ISSUE, AND
09:27AM 16 I THINK AS LONG AS THE WITNESS IS NOT DISPLAYING SYMPTOMS, THE
09:27AM 17 WITNESS CAN END ISOLATION IN FIVE DAYS, WHICH WOULD BE -- FIVE
09:27AM 18 DAYS FROM A POSITIVE TEST, WHICH WOULD BE NEXT TUESDAY.

09:27AM 19 SO WE MAY HAVE TO HAVE DISCUSSIONS ABOUT HOW WE'RE GOING
09:27AM 20 TO FILL FRIDAY NOW. THIS IS A WITNESS THAT WE ANTICIPATED
09:27AM 21 WOULD TESTIFY ON FRIDAY.

09:27AM 22 I THINK WE CAN MOVE SOME WITNESSES THAT WE THOUGHT WOULD
09:27AM 23 TESTIFY NEXT WEEK TO THIS FRIDAY, AND THEN THIS WITNESS NEXT
09:27AM 24 WEEK.

09:27AM 25 SO I DON'T KNOW THAT ULTIMATELY IT WILL AFFECT WHEN WE

09:27AM 1 WILL FINISH, BUT THERE'S SOME NOW MOVING PARTS THAT I DIDN'T
09:27AM 2 ANTICIPATE BEFORE ABOUT 8:00 A.M. THIS MORNING.

09:27AM 3 ALL OF THAT TO SAY, THOUGH, I THINK THE GOVERNMENT IS
09:27AM 4 PRETTY CLOSE TO RESTING AND, AS I SAID, MAYBE THREE, FOUR OR SO
09:27AM 5 FULL TRIAL DAYS AND WE'LL BE THERE.

09:27AM 6 THE COURT: OKAY. SO THAT -- THANK YOU.

09:28AM 7 SO IT COULD BE -- IT SOUNDS LIKE THE GOVERNMENT NEXT WEEK
09:28AM 8 WOULD BE RESTING SOMETIME.

09:28AM 9 MR. SCHENK: YES, YOUR HONOR, I THINK THAT'S A FAIR
09:28AM 10 ESTIMATE.

09:28AM 11 THE COURT: RIGHT. RIGHT.

09:28AM 12 MR. COOPERSMITH: THAT'S GOOD TO KNOW, YOUR HONOR,
09:28AM 13 SO I APPRECIATE MR. SCHENK'S COMMENTS.

09:28AM 14 IF MR. SCHENK DOES NOT WANT TO SAY THIS IN OPEN COURT,
09:28AM 15 THAT'S FINE. IT WOULD BE GOOD TO KNOW WHICH WITNESS WE'RE
09:28AM 16 TALKING ABOUT. I DON'T KNOW WHETHER WE CAN MEET AND CONFER
09:28AM 17 ABOUT THAT.

09:28AM 18 THE COURT: YOU CAN DISCUSS THAT. YOU CAN DISCUSS
09:28AM 19 THAT WHEN WE'RE FINISHED HERE.

09:28AM 20 SO IT SOUNDS LIKE WE'LL HAVE -- WILL WE HAVE GAPS THIS
09:28AM 21 WEEK, TODAY AND FRIDAY? IT DOESN'T SOUND LIKE IT.

09:28AM 22 MR. SCHENK: I DON'T ANTICIPATE WE'LL HAVE ANY GAPS
09:28AM 23 TODAY. I THINK OUR DISCUSSION AT THE END OF THE DAY YESTERDAY
09:28AM 24 WAS VERY HELPFUL, THANK YOU, AND I THINK WE HAVE SUFFICIENT
09:28AM 25 WITNESSES TO FILL TODAY.

09:28AM 1 AND I STILL HOPE THAT WE WILL HAVE SUFFICIENT WITNESSES TO
09:28AM 2 FILL FRIDAY EVEN IN LIGHT OF THIS CHANGE.

09:28AM 3 BUT, YES, I INTEND TO REVEAL THE NAME TO MR. COOPERSMITH.

09:28AM 4 THE COURT: SURE, SURE.

09:28AM 5 MR. SCHENK: AND WE'LL WORK WITH HIM ON PROVIDING
09:28AM 6 NEW NAMES OF WITNESSES WHO WILL REPLACE THIS WITNESS.

09:29AM 7 THE COURT: OKAY. GREAT.

09:29AM 8 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:29AM 9 THE COURT: I GUESS I DIDN'T, MR. SCHENK, ASK FOR
09:29AM 10 FOLLOW-UP ON WHAT HAPPENS IF THERE'S A LIS DEFENSE. LET ME
09:29AM 11 JUST PUT IT THAT WAY THEN.

09:29AM 12 IT COULD BE A REBUTTAL CASE FOR THE GOVERNMENT, AND YOU'LL
09:29AM 13 HAVE TO ANALYZE THAT, I PRESUME.

09:29AM 14 MR. SCHENK: YES, YOUR HONOR.

09:29AM 15 I THINK IF THE DEFENSE, AT LEAST IF I'M READING THE TEA
09:29AM 16 LEAVES CORRECTLY, SOME OF THE COMMENTS WERE PUTTING THE OCTOBER
09:29AM 17 LETTER IN FRONT OF THE JURY IS AWKWARD BECAUSE THE JURY DOESN'T
09:29AM 18 UNDERSTAND WHY THE GOVERNMENT WOULD WRITE SUCH A LETTER, SO WE
09:29AM 19 WANT THE EMAILS TO PUT IN FRONT OF THE JURY.

09:29AM 20 THERE'S GOING TO BE A FIGHT, AND THERE'S GOING TO BE
09:29AM 21 DISAGREEMENT, ABOUT WHETHER THAT'S APPROPRIATE. THE COURT WILL
09:29AM 22 RESOLVE THAT DISPUTE.

09:29AM 23 AND I CERTAINLY FORESEE, IF SOME OF THOSE DOCUMENTS ARE
09:30AM 24 ADMITTED, THE GOVERNMENT WANTING TO CALL ADDITIONAL WITNESSES
09:30AM 25 FOLLOWING THAT KIND OF DEFENSE CASE IN A REBUTTAL CASE.

09:30AM 1 AND WE TALKED ABOUT THIS JUST AFTER THE DEFENSE OPENING.
09:30AM 2 THE DOOR WAS OPENED QUITE WIDE BY THE STATEMENTS THAT THE
09:30AM 3 DEFENSE MADE ALREADY, AND I -- THE GOVERNMENT IS GOING TO ASK
09:30AM 4 FOR WIDE BERTH FROM THE COURT TO RESPOND WITH A LOT OF EVIDENCE
09:30AM 5 REGARDING THE DESTRUCTION OF LIS IF THE DEFENSE IS GOING TO
09:30AM 6 SUGGEST THAT THE JURY SHOULD DRAW ANY CONCLUSIONS ABOUT THE
09:30AM 7 DESTRUCTION OF LIS.

09:30AM 8 AND IT SEEMS, BY THE SUGGESTIONS THAT MR. COOPERSMITH IS
09:30AM 9 MAKING, THAT IS, EITHER THE BRADY LETTER OR THE UNDERLYING
09:30AM 10 EMAILS, THAT THERE IS GOING TO BE FINGER POINTING, AND THE
09:30AM 11 GOVERNMENT IS ENTITLED TO RESPOND TO THAT INACCURATE FINGER
09:30AM 12 POINTING.

09:30AM 13 THE COURT: THIS IS WHAT THE COURT REFERENCED IN
09:30AM 14 1326, PAGE 22 AT I THINK IT WAS LINE 8 --

09:31AM 15 MR. COOPERSMITH: YES, YOUR HONOR.

09:31AM 16 THE COURT: -- OPENING THE DOOR IF THIS COMES UP. I
09:31AM 17 THINK IT WAS LINES 13 OR 14 OR SOMETHING LIKE THAT.

09:31AM 18 MR. COOPERSMITH: I THINK ALL I CAN DO IS TAKE IT AS
09:31AM 19 IT COMES. IF THE GOVERNMENT WISHES TO PRESENT EVIDENCE IN
09:31AM 20 THEIR REBUTTAL CASE, THEY CAN DO THAT.

09:31AM 21 AS TO WHICH WITNESSES THEY CAN CALL AND WHAT THOSE
09:31AM 22 WITNESSES WILL SAY, I LOOK FORWARD TO FURTHER DISCUSSIONS ABOUT
09:31AM 23 THAT.

09:31AM 24 WE HAVE SOME VIEWS ABOUT WHAT, GIVEN THE CASE WE MIGHT
09:31AM 25 PRESENT. WE HAVEN'T DECIDED ON THAT. BUT WHAT WE MIGHT

09:31AM 1 PRESENT, WHAT WE OPEN THE DOOR TO AND WHAT WE DON'T OPEN THE
09:31AM 2 DOOR TO, I IMAGINE MR. SCHENK WILL HAVE A DIFFERENT VIEW.

09:31AM 3 THAT'S SOMETHING THAT WE LOOK FORWARD TO DISCUSSING. THAT
09:31AM 4 REMAINS TO BE SEEN.

09:31AM 5 THE COURT: I THINK WE'RE ALL AWARE OF THE NUANCES
09:32AM 6 OF THE LIS AND, SHALL I SAY, WHAT LURKS BEHIND THE DOOR.

09:32AM 7 ALL RIGHT. THANK YOU.

09:32AM 8 MR. COOPERSMITH: COULD WE HAVE FIVE MINUTES FOR A
09:32AM 9 BREAK?

09:32AM 10 THE COURT: YES. IT'S 9:32. WE'LL TAKE ABOUT TEN
09:32AM 11 MINUTES.

09:32AM 12 MR. SCHENK: MAY I ASK A QUESTION ON THE UPCOMING
09:32AM 13 SCHEDULE?

09:32AM 14 MY RECOLLECTION IS THAT THE WEEK OF THE 23RD, WE HAVE
09:32AM 15 TRIAL ON FRIDAY, THE 27TH.

09:32AM 16 THE WEEK OF THE 30TH WE HAVE NO TRIAL.

09:32AM 17 THE COURT: THAT'S CORRECT.

09:32AM 18 MR. SCHENK: THANK YOU.

09:32AM 19 THE COURT: THAT'S CORRECT.

09:32AM 20 MR. SCHENK: I KNOW THERE WAS AN EFFORT TO INQUIRE
09:32AM 21 ABOUT ADDING DAYS. MY UNDERSTANDING IS THAT THAT WAS
09:32AM 22 UNSUCCESSFUL. I JUST WANTED TO CONFIRM THAT.

09:32AM 23 THE COURT: SO THE WEEK OF THE 30TH WE'LL BE DARK.

09:32AM 24 MR. COOPERSMITH: AND THE SCHEDULE NEXT WEEK IS
09:32AM 25 THREE DAYS NEXT WEEK?

09:32AM 1 THE COURT: YES.

09:33AM 2 (DISCUSSION OFF THE RECORD.)

09:33AM 3 THE COURT: RIGHT, IT'S 17TH, 18TH, AND 20TH.

09:33AM 4 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:33AM 5 MR. SCHENK: THANK YOU.

09:33AM 6 (RECESS FROM 9:33 A.M. UNTIL 9:49 A.M.)

09:49AM 7 THE COURT: PLEASE BE SEATED. THANK YOU AGAIN FOR

09:49AM 8 YOUR COURTESY.

09:49AM 9 WE'RE BACK ON THE RECORD IN THE BALWANI MATTER.

09:49AM 10 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:49AM 11 OUR JURY IS PRESENT.

09:49AM 12 GOOD MORNING, LADIES AND GENTLEMEN. I WAS ALMOST ACCURATE

09:49AM 13 IN MY PREDICTION OF WHEN WE WOULD START.

09:49AM 14 THANK YOU FOR YOUR PATIENCE.

09:49AM 15 LET ME ASK YOU AGAIN, DURING THE BREAK, DID ANY OF YOU,

09:49AM 16 MEMBERS OF THE JURY, HAVE CAUSE TO LEARN, LISTEN, SEE, OR

09:49AM 17 DISCUSS ANYTHING ABOUT THIS CASE? IF SO, MAY I SEE YOUR HANDS?

09:49AM 18 I SEE NO HANDS. THANK YOU VERY MUCH.

09:49AM 19 SHALL WE CONTINUE WITH OUR WITNESS THEN, MR. MOSLEY, I

09:49AM 20 THINK?

09:50AM 21 GOOD MORNING, SIR.

09:50AM 22 THE WITNESS: GOOD MORNING.

09:50AM 23 THE COURT: PLEASE MAKE YOURSELF COMFORTABLE.

09:50AM 24 TAKE YOUR MASK OFF IF YOU WOULD LIKE.

09:50AM 25 THE WITNESS: OH. THANK YOU.

09:50AM 1 THE COURT: YOU'RE WELCOME.

09:50AM 2 I REMIND YOU YOU'RE STILL UNDER OATH.

09:50AM 3 AND WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE JUST STATE
09:50AM 4 YOUR NAME AGAIN.

09:50AM 5 THE WITNESS: YES, SIR.

09:50AM 6 DANIEL LYNN MOSTLY.

09:50AM 7 **(GOVERNMENT'S WITNESS, DANIEL MOSLEY, WAS PREVIOUSLY**
09:50AM 8 **SWORN.)**

09:50AM 9 THE COURT: THANK YOU. COUNSEL.

09:50AM 10 MR. CAZARES: THANK YOU, YOUR HONOR.

09:50AM 11 **CROSS-EXAMINATION (RESUMED)**

09:50AM 12 BY MR. CAZARES:

09:50AM 13 Q. GOOD MORNING, MR. MOSLEY.

09:50AM 14 A. GOOD MORNING.

09:50AM 15 Q. AND I WANT TO PICK OFF WHERE WE LEFT OFF YESTERDAY, AND
09:50AM 16 WHERE WE LEFT OFF WAS I THINK YOUR LETTER AND MEMO TO
09:50AM 17 DR. KISSINGER DATED SEPTEMBER 2ND, 2014.

09:50AM 18 COULD WE PUT UP ON THE SCREEN EXHIBIT 4197.

09:50AM 19 JUST TO CONFIRM, THE DATE OF THE COVER LETTER IN THE MEMO
09:50AM 20 IS SEPTEMBER 2ND, 2014; IS THAT RIGHT?

09:50AM 21 A. YES.

09:50AM 22 Q. AND JUST TO CONFIRM, YOU DRAFTED THIS MEMO PRIOR TO EVER
09:51AM 23 HAVING ANY COMMUNICATIONS WITH MR. BALWANI; CORRECT?

09:51AM 24 A. THAT IS CORRECT.

09:51AM 25 Q. OKAY. NOW, IF WE GO TO PAGE 4 OF THE MEMO UNDER THE

09:51AM 1 SECTION TITLED BUSINESS APPROACH.

09:51AM 2 DO YOU SEE THAT?

09:51AM 3 A. I DO.

09:51AM 4 Q. AND SOME OF THIS WE HAVE ALREADY SPOKEN ABOUT. I DON'T
09:51AM 5 WANT TO REVISIT ALL OF THIS.

09:51AM 6 BUT IN THIS SECTION, ESSENTIALLY YOU HAVE IDENTIFIED
09:51AM 7 FACTORS CONFIRMING KIND OF THERANOS'S BUSINESS STRATEGY AND
09:51AM 8 APPROACH AS YOU UNDERSTOOD IT FROM THE MATERIALS; IS THAT FAIR?

09:51AM 9 A. THAT IS CORRECT.

09:51AM 10 Q. OKAY. AND YOU THOUGHT THESE WERE ALL NOTABLE FACTORS IN
09:51AM 11 THERANOS'S BUSINESS APPROACH ACCORDING TO YOUR OWN ANALYSIS;
09:51AM 12 CORRECT?

09:51AM 13 A. YES.

09:51AM 14 Q. OKAY. AND THAT INCLUDED THE FACT OF THE PATENTS AND
09:51AM 15 PATENT PORTFOLIO THAT THERANOS HAD; IS THAT CORRECT?

09:51AM 16 A. CORRECT.

09:51AM 17 Q. TRADEMARKS THAT THE COMPANY OWNED; CORRECT?

09:51AM 18 A. CORRECT.

09:51AM 19 Q. THE PHARMACEUTICAL RELATIONSHIPS, AS WE TALKED ABOUT
09:52AM 20 BEFORE; CORRECT?

09:52AM 21 A. RIGHT.

09:52AM 22 Q. AND ARE YOU AWARE OF THE FACT THAT THE PHARMACEUTICAL
09:52AM 23 RELATIONSHIPS BETWEEN THERANOS AND THE PHARMACEUTICAL
09:52AM 24 COMPANIES, THAT MUCH OF THAT TOOK PLACE PRIOR TO MR. BALWANI
09:52AM 25 EVER JOINING THERANOS?

09:52AM 1 A. I HAVE NO KNOWLEDGE ABOUT WHEN HE JOINED OR ANYTHING ELSE,
09:52AM 2 SO I DON'T KNOW HOW I CAN ANSWER THAT QUESTION.

09:52AM 3 Q. I THINK YOU JUST DID. THANK YOU.

09:52AM 4 AND YOU CALLED THE PARTNERSHIP WITH WALGREENS BRILLIANT IN
09:52AM 5 YOUR MEMO TO DR. KISSINGER; CORRECT?

09:52AM 6 A. I DID.

09:52AM 7 Q. AND YOU BELIEVED THAT AT THE TIME?

09:52AM 8 A. YES, I DID.

09:52AM 9 Q. AND THAT WAS, AGAIN, RELATED TO THIS KIND OF STRATEGY FOR
09:52AM 10 A SMALLER COMPANY LIKE THERANOS TO HAVE THE AVAILABLE
09:52AM 11 RESOURCES, I GUESS I COULD SAY, OF WALGREENS TO HELP TAKE IT
09:52AM 12 NATIONAL; CORRECT?

09:52AM 13 A. CORRECT.

09:52AM 14 Q. AND YOU THOUGHT WALGREENS WAS A CAPABLE PARTNER TO HELP A
09:52AM 15 SMALL COMPANY LIKE THERANOS TO COMPETE WITH LABCORP AND QUEST;
09:53AM 16 CORRECT?

09:53AM 17 A. I DID.

09:53AM 18 Q. AND CONTINUING ON THE BUSINESS APPROACH AGAIN. YOU SAID
09:53AM 19 YESTERDAY THAT THE HIGH POWERED BOARD OF DIRECTORS OF THERANOS
09:53AM 20 ALSO CONTRIBUTED TO YOUR DECISION TO INVEST; CORRECT?

09:53AM 21 A. YES.

09:53AM 22 Q. NOW, IF WE COULD TURN TO PAGE 9 OF THE MEMO.

09:53AM 23 AND THIS IS THE -- THIS PORTION THAT YOU REVIEWED WITH
09:53AM 24 MR. SCHENK CONCERNING RISKS THAT YOU YOURSELF IDENTIFIED AFTER
09:53AM 25 YOUR OWN REVIEW OF THE MATERIALS; IS THAT FAIR?

09:53AM

1

A. THAT'S CORRECT.

09:53AM

2

Q. AND AMONG THE RISKS THAT YOU IDENTIFIED IN SUB A, YOU

09:53AM

3

INDICATE THAT THE RELATIONSHIP DEPENDS UPON -- THE BUSINESS

09:53AM

4

STRATEGY DEPENDS UPON WALGREENS; CORRECT?

09:53AM

5

A. CORRECT.

09:53AM

6

Q. AND, AND YOU --

09:53AM

7

A. IT'S AN IMPORTANT PART OF THE BUSINESS PLAN THAT DEPENDS

09:53AM

8

ON THE RELATIONSHIP WITH WALGREENS.

09:54AM

9

Q. AND YOU NOTE THAT IT WILL BE HELPFUL TO KNOW WALGREENS'S

09:54AM

10

PERSPECTIVE ON THIS RELATIONSHIP AND HOW IT IS CURRENTLY

09:54AM

11

WORKING OUT?

09:54AM

12

A. CORRECT.

09:54AM

13

Q. AND THESE ARE QUESTIONS THAT YOU COULD HAVE PUT TO

09:54AM

14

MS. HOLMES; CORRECT?

09:54AM

15

MR. SCHENK: OBJECTION. RELEVANCE.

09:54AM

16

THE COURT: SUSTAINED.

09:54AM

17

BY MR. CAZARES:

09:54AM

18

Q. AND YOU ALSO INDICATE, "IT WOULD ALSO BE HELPFUL TO KNOW

09:54AM

19

SOME ADDITIONAL DETAILS OF THE STRUCTURE AND TERMS OF THE

09:54AM

20

PARTNERSHIP BETWEEN WALGREENS AND THERANOS."

09:54AM

21

DO YOU SEE THAT?

09:54AM

22

A. CORRECT.

09:54AM

23

Q. AND DID YOU EVER GET ANSWERS TO THE QUESTIONS THAT YOU

09:54AM

24

RAISED IN THIS PORTION OF YOUR MEMO?

09:54AM

25

A. YOU KNOW, I BELIEVE OVER TIME I DID GET MORE INSIGHT INTO

09:54AM 1 THE STRUCTURE OF THE TERMS OF THE AGREEMENT, BUT I DIDN'T AT
09:54AM 2 THIS TIME.

09:54AM 3 Q. AND IF YOU CONTINUE UNDER THE RISK PORTION TO THE NEXT
09:54AM 4 SECTION.

09:54AM 5 AND YOU NOTE, FROM SOME OF THE FINANCIAL NUMBERS THAT WERE
09:54AM 6 WITHIN THE INVESTOR MATERIALS, SOME OF THOSE PROJECTION
09:54AM 7 NUMBERS.

09:54AM 8 DO YOU SEE THAT?

09:54AM 9 A. I SEE IT.

09:54AM 10 Q. OKAY. AND YOU ALSO NOTE THAT AT THE TIME THAT YOU WERE
09:55AM 11 AWARE OF THE FACT THAT THERANOS WAS IN 30 WALGREENS PHARMACIES;
09:55AM 12 CORRECT?

09:55AM 13 A. YES.

09:55AM 14 Q. AND THAT IT WOULD BE HELPFUL TO KNOW HOW MANY PHARMACY
09:55AM 15 LOCATIONS ARE ASSUMED FOR THOSE 2015 PROJECTIONS; CORRECT?

09:55AM 16 A. CORRECT.

09:55AM 17 Q. SO YOU UNDERSTOOD THAT THE 2015 PROJECTIONS WERE DEPENDENT
09:55AM 18 ON THE EXECUTION OF THE WALGREENS ROLLOUT; CORRECT?

09:55AM 19 A. UM, WOULD YOU READ THAT AGAIN, PLEASE?

09:55AM 20 Q. I CAN RESTATE IT.

09:55AM 21 A. YES, PLEASE.

09:55AM 22 Q. YOUR, YOUR -- YOU WROTE THAT IT WOULD BE HELPFUL TO KNOW
09:55AM 23 HOW MANY PHARMACY LOCATIONS ARE ASSUMED IN THE 2015
09:55AM 24 PROJECTIONS.

09:55AM 25 DO YOU SEE THAT?

09:55AM 1 A. I DO.

09:55AM 2 Q. OKAY. AND SO THAT YOU UNDERSTOOD AT THE TIME THAT THOSE

09:55AM 3 2015 PROJECTIONS WERE DEPENDENT UPON THE ABILITY TO ROLL OUT

09:55AM 4 THERANOS TESTING IN WALGREENS STORES OVER THE NEXT YEAR;

09:55AM 5 CORRECT?

09:55AM 6 A. YES. IT ASSUMED SOME LEVEL OF ROLLOUT, ABSOLUTELY.

09:55AM 7 Q. AND YOU UNDERSTOOD THAT THERE WAS SOME RISK THAT MAYBE THE

09:55AM 8 PARTIES WOULDN'T AGREE ON THE TERMS AND MAYBE IT MIGHT NEVER

09:56AM 9 HAPPEN?

09:56AM 10 A. YES.

09:56AM 11 Q. AND IF WE CAN GO DOWN TO SUB C.

09:56AM 12 YOU IDENTIFY FINANCIAL CIRCUMSTANCE OF THERANOS CASH ON

09:56AM 13 HAND; CORRECT?

09:56AM 14 A. CORRECT.

09:56AM 15 Q. YOU ASKED A QUESTION ABOUT WHY THERANOS WAS RAISING FUNDS;

09:56AM 16 CORRECT?

09:56AM 17 A. CORRECT.

09:56AM 18 Q. AND WHY THERANOS DIDN'T SIMPLY BORROW FUNDS TO EXPAND THE

09:56AM 19 BUSINESS; RIGHT?

09:56AM 20 A. CORRECT.

09:56AM 21 Q. OKAY. AND THEN IN SUB D YOU NOTE SOME OF THE CORPORATE

09:56AM 22 DOCUMENTS AND THE REDEMPTION ISSUE THAT YOU RAISED WITH

09:56AM 23 MS. HOLMES; CORRECT?

09:56AM 24 A. CORRECT.

09:56AM 25 Q. AND YOU DID GET RESOLUTION ON THAT AS YOU DISCUSSED

09:56AM 1 YESTERDAY?

09:56AM 2 A. YES, I DID.

09:56AM 3 Q. AND THAT WAS IMPORTANT TO YOU?

09:56AM 4 A. IT WAS.

09:56AM 5 Q. TO PROTECT YOURSELF AND YOUR CLIENT INVESTORS RELATING TO

09:56AM 6 THIS ISSUE OF REDEMPTION RIGHTS; CORRECT?

09:56AM 7 A. THAT IS CORRECT.

09:56AM 8 Q. AND IF WE CAN GO DOWN TO SUB C. THAT'S THE LAST SUB.

09:57AM 9 NOW, IF I CAN JUST CONFIRM, SO YOU SHARED THE MEMO WITH

09:57AM 10 DR. KISSINGER; CORRECT?

09:57AM 11 A. I DID.

09:57AM 12 Q. YOU SHARED IT WITH SOME OF YOUR INVESTOR CLIENTS?

09:57AM 13 A. YOU KNOW, I DON'T KNOW WHO I SHARED IT WITH.

09:57AM 14 I DO KNOW IT WAS GIVEN TO THE PEOPLE AT THE NIARCHOS

09:57AM 15 FOUNDATION.

09:57AM 16 Q. OKAY. YOU DID NOT SHARE IT WITH MS. HOLMES?

09:57AM 17 A. I DID NOT.

09:57AM 18 Q. AND YOU DID NOT SHARE IT WITH MR. BALWANI?

09:57AM 19 A. I DID NOT.

09:57AM 20 AND I'M NOT SURE I SHARED IT WITH ANY OTHER PERSON I KNEW

09:57AM 21 THAT WAS LOOKING AT THE COMPANY.

09:57AM 22 Q. FAIR ENOUGH. THANK YOU.

09:57AM 23 NOW, WITHIN THE -- I THINK THE BINDERS ARE STILL THERE.

09:57AM 24 WITHIN THE DARK BINDER --

09:57AM 25 A. UH-HUH, I'VE GOT IT.

09:57AM 1 Q. -- THERE SHOULD BE A DOCUMENT TAB 14124. SO 14124.

09:58AM 2 A. I HAVE IT.

09:58AM 3 Q. AND 14124 APPEARS TO BE AN EMAIL EXCHANGE BETWEEN YOURSELF

09:58AM 4 AND MS. HOLMES.

09:58AM 5 DO YOU SEE THAT?

09:58AM 6 A. I DO.

09:58AM 7 Q. AND IT'S DATED OCTOBER 6TH, 2014?

09:58AM 8 A. CORRECT.

09:58AM 9 MR. CAZARES: MOVE TO ADMIT 14124, YOUR HONOR.

09:58AM 10 MR. SCHENK: NO OBJECTION.

09:58AM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:58AM 12 (DEFENDANT'S EXHIBIT 14124 WAS RECEIVED IN EVIDENCE.)

09:58AM 13 BY MR. CAZARES:

09:58AM 14 Q. OKAY. IF WE CAN FOCUS ON THE TWO MESSAGES IN THE LOWER

09:58AM 15 PORTION OF THE EXHIBIT. THIS WAS OCTOBER 6TH, 2014.

09:58AM 16 THIS WAS AROUND THE TIME THAT YOU WERE TO VISIT THERANOS

09:58AM 17 AND YOU HAD SOME MEETINGS; CORRECT?

09:58AM 18 A. THAT'S CORRECT.

09:58AM 19 Q. AND IN THE FIRST OF THE MESSAGES IN THIS EXHIBIT FROM

09:58AM 20 YOURSELF TO MS. HOLMES ON OCTOBER 6TH, 2014, YOU WROTE,

09:58AM 21 "ELIZABETH,

09:58AM 22 "I HOPE ALL IS WELL. I AM HAPPY THAT EACH OF THE

09:58AM 23 POTENTIAL INVESTORS FROM THE WALTON, COX, DEVOS AND THE

09:59AM 24 NIARCHOS FAMILIES ARE PROCEEDING VERY WELL AS I WOULD EXPECT."

09:59AM 25 DO YOU SEE THAT?

09:59AM 1 A. I DO SEE THAT.

09:59AM 2 Q. AND YOU INDICATED "GREG BROUGHT ME UP TO SPEED ON WHERE
09:59AM 3 THE WALTONS STAND."

09:59AM 4 DO YOU SEE THAT?

09:59AM 5 A. I DO.

09:59AM 6 Q. AND THEN THE NEXT PARAGRAPH, "I KNOW JERRY TUBERGEN IS SET
09:59AM 7 TO MEET WITH YOU IN PALO ALTO ON THE 14TH AND HE IS BRINGING
09:59AM 8 SEVERAL FAMILY MEMBERS, INCLUDING DOUG, WHO RUNS AMWAY, WHO I
09:59AM 9 THINK YOU WILL ENJOY MEETING. THEY ARE VERY ENTHUSIASTIC ABOUT
09:59AM 10 BEING IN YOUR CORE GROUP GOING FORWARD."

09:59AM 11 DO YOU SEE THAT?

09:59AM 12 A. I DO.

09:59AM 13 Q. AND WERE YOU REPORTING TO MS. HOLMES COMMUNICATIONS THAT
09:59AM 14 YOU HAD WITH MR. TUBERGEN?

09:59AM 15 A. WELL, THAT'S WHERE I WOULD HAVE GOT THAT INFORMATION WOULD
09:59AM 16 BE FROM JERRY TUBERGEN.

09:59AM 17 Q. FAIR ENOUGH. THANK YOU.

09:59AM 18 AND THEN YOU SAY, "I WILL SEE YOU ON THE 17TH WITH AT
09:59AM 19 LEAST TWO OR MORE OF THE NIARCHOS FOUNDATION. ONCE I KNOW WHO
09:59AM 20 WILL BE COMING, I WILL LET YOU KNOW AND WILL SEND YOU THE
09:59AM 21 TOPICS THAT THEY WOULD LIKE TO COVER. AGAIN, VERY ENTHUSIASTIC
10:00AM 22 ABOUT THE OPPORTUNITY."

10:00AM 23 DO YOU SEE THAT?

10:00AM 24 A. I DO.

10:00AM 25 Q. AND, AGAIN, WERE YOU INDICATING ENTHUSIASM THAT YOU WERE

10:00AM 1 HEARING FROM MEMBERS OF THE NIARCHOS FOUNDATION?

10:00AM 2 A. I'M NOT SURE WHAT I'M SAYING THERE. I JUST SAY, "AGAIN,
10:00AM 3 VERY ENTHUSIASTIC ABOUT THE OPPORTUNITY."

10:00AM 4 I DON'T KNOW WHETHER THAT IS SOMETHING THAT I GOT FROM THE
10:00AM 5 NIARCHOS FOUNDATION OR NOT. IT'S NOT REFERRING TO ANY
10:00AM 6 PARTICULAR PERSON.

10:00AM 7 Q. OKAY.

10:00AM 8 A. AND I DIDN'T, I DIDN'T REALLY KNOW THE TWO INDIVIDUALS WHO
10:00AM 9 WERE DOING THE DUE DILIGENCE FOR THE NIARCHOS FOUNDATION.

10:00AM 10 Q. FAIR ENOUGH. THANK YOU.

10:00AM 11 AND THE NEXT LINE IN THE EMAIL YOU WROTE, "ON THE COX
10:00AM 12 FAMILY, IT SOUNDS LIKE YOU HAD A VERY GOOD MEETING WITH
10:00AM 13 ALEX TAYLOR WHO REALLY ENJOYED THE OPPORTUNITY TO MEET WITH
10:00AM 14 YOU. IF YOU CAN MAKE IT WORK, ALEX, JOHN DYER (CEO OF COX
10:00AM 15 ENTERPRISES) HOPE TO MEET WITH YOU FRIDAY. AGAIN, VERY
10:00AM 16 ENTHUSIASTIC AND EXCITED ABOUT BEING PART OF YOUR CORE GROUP."

10:00AM 17 DO YOU SEE THAT?

10:00AM 18 A. I DO.

10:00AM 19 Q. AND THAT MEETING DID TAKE PLACE?

10:00AM 20 A. YES, IT DID.

10:00AM 21 Q. AND YOU PARTICIPATED IN THAT MEETING; RIGHT?

10:01AM 22 A. YES, I DID.

10:01AM 23 Q. THAT'S ONE OF THE TWO MEETINGS THAT YOU HAD?

10:01AM 24 A. YES.

10:01AM 25 Q. AND THEN MS. HOLMES RESPONDED BACK THANKING YOU FOR THE

10:01AM 1 NOTE AND YOUR COMMENTS.

10:01AM 2 DO YOU SEE THAT?

10:01AM 3 A. I DO SEE THAT.

10:01AM 4 Q. AND THAT SHE WAS GOING TO GIVE YOU A CALL TO CONNECT

10:01AM 5 RE GREG.

10:01AM 6 AND THAT'S MR. PENNER?

10:01AM 7 A. THAT IS CORRECT.

10:01AM 8 Q. AND MS. HOLMES REPORTED BACK TO YOU ABOUT A CALL SHE HAD

10:01AM 9 WITH JERRY AND A WOMAN ON HIS TEAM.

10:01AM 10 DO YOU SEE THAT?

10:01AM 11 A. YES, I DO.

10:01AM 12 Q. AND THAT'S A REFERENCE TO JERRY TUBERGEN?

10:01AM 13 A. YES, IT IS.

10:01AM 14 Q. AND THEN MS. HOLMES CONFIRMS A FRIDAY MEETING WITH ALEX.

10:01AM 15 DO YOU SEE THAT?

10:01AM 16 A. YES, I DO SEE THAT.

10:01AM 17 Q. AND THAT'S ALEX TAYLOR OF THE COX FAMILY?

10:01AM 18 A. THAT IS CORRECT.

10:01AM 19 Q. SO JUST TO CONFIRM, SO YOU TRAVELLED TO CALIFORNIA TO MEET

10:02AM 20 WITH MS. HOLMES TWICE, ONCE ON THE 10TH OF OCTOBER, AND THEN

10:02AM 21 THE SECOND TIME WITH THE NIARCHOS FOUNDATION PERSON A WEEK

10:02AM 22 LATER; CORRECT?

10:02AM 23 A. THAT IS CORRECT.

10:02AM 24 Q. AND ON ONE OF THOSE TWO VISITS TO CALIFORNIA, YOU WERE

10:02AM 25 GIVEN A TOUR OF THERANOS'S LAB; CORRECT?

10:02AM 1 A. I THINK I WAS GIVEN A TOUR, YES.

10:02AM 2 Q. OKAY. AND ON THE TOUR OF THE LAB IN OCTOBER OF 2014, YOU

10:02AM 3 SAW ONE VERY LARGE MACHINE; CORRECT?

10:02AM 4 A. I DID SEE ONE VERY LARGE MACHINE, YES.

10:02AM 5 Q. AND THIS WAS A LARGE MACHINE, NOT ONE OF THE SMALL

10:03AM 6 THERANOS DEVICES; CORRECT?

10:03AM 7 A. AS I REMEMBER, IT WAS JUST A LONG, LONG, LARGE MACHINE.

10:03AM 8 Q. LIKE A COMMERCIAL MACHINE OF SOME SORT?

10:03AM 9 A. IT WAS A LARGE MACHINE.

10:03AM 10 Q. OKAY. AND THAT MACHINE WAS REFERRED TO AS A HIGH

10:03AM 11 THROUGHPUT; CORRECT?

10:03AM 12 A. IT, IT MAY HAVE BEEN. I DON'T REMEMBER SPECIFICALLY.

10:03AM 13 Q. OKAY. NOW, IN THE COURSE OF YOUR MEETINGS WITH

10:03AM 14 MS. HOLMES, YOU REVIEWED THESE MATERIALS, YOU ALSO HAD SOME

10:03AM 15 COMMUNICATIONS WITH DAVID BOIES, DID YOU NOT?

10:03AM 16 A. YES, I DID.

10:03AM 17 Q. AND MR. BOIES WAS, AGAIN, A PARTNER OF YOURS AT CRAVATH?

10:03AM 18 A. HE WAS NOT A PARTNER OF MINE AT THE TIME, BUT HE HAD BEEN

10:03AM 19 A PARTNER, YES.

10:03AM 20 Q. A FORMER PARTNER?

10:03AM 21 A. FORMER PARTNER.

10:03AM 22 Q. AND YOU UNDERSTOOD THAT MR. BOIES WAS DOING LEGAL WORK FOR

10:03AM 23 THERANOS AT THAT TIME?

10:04AM 24 A. I KNEW HE WAS DOING LEGAL WORK IN CONNECTION WITH

10:04AM 25 THERANOS.

10:04AM 1 I DON'T KNOW WHO HE WAS REPRESENTING PARTICULARLY.

10:04AM 2 Q. OKAY. NOW, IS IT CORRECT THAT YOU UNDERSTOOD AT THIS TIME
10:04AM 3 IN THE FALL OF 2014 THAT THERANOS DEVICES, THEIR TESTING
10:04AM 4 ANALYZERS, WERE NOT ACTUALLY IN WALGREENS STORES FOR THE
10:04AM 5 PURPOSE OF PERFORMING THE TESTS?

10:04AM 6 A. I DID REALIZE THAT THEY WERE NOT CURRENTLY IN THE STORES,
10:04AM 7 YES.

10:04AM 8 Q. OKAY. AND SO YOU UNDERSTOOD THAT THE TESTING WAS BEING
10:04AM 9 DONE OFFSITE, NOT IN THE STORES?

10:04AM 10 A. I DID.

10:04AM 11 Q. WITHIN THAT SAME BINDER -- ACTUALLY I THINK IT'S ALREADY
10:04AM 12 ADMITTED, 4284.

10:04AM 13 IF WE CAN PUT THAT UP ON THE SCREEN, MR. ALLEN.

10:04AM 14 4284 IS PROBABLY IN BOTH BINDERS.

10:04AM 15 A. I'VE GOT IT.

10:04AM 16 Q. OKAY. AND 4284 IS AN EMAIL CHAIN -- YOU CAN ALSO SEE IT
10:05AM 17 UP ON THE SCREEN -- THE LATTER OF WHICH IS DATED
10:05AM 18 OCTOBER 23RD, 2014.

10:05AM 19 THAT'S A MESSAGE FROM MS. HOLMES TO YOURSELF.

10:05AM 20 DO YOU SEE THAT?

10:05AM 21 A. I DO.

10:05AM 22 Q. AND BELOW THAT IS A MESSAGE FROM YOU TO MS. HOLMES, AND
10:05AM 23 THE SUBJECT IS MEETING LAST FRIDAY.

10:05AM 24 DO YOU SEE THAT?

10:05AM 25 A. I DO SEE THAT.

10:05AM 1 Q. AND IN THE MESSAGE YOU WROTE TO MS. HOLMES, "IT WAS GOOD
10:05AM 2 TO SEE YOU ON FRIDAY.

10:05AM 3 "OVER THE WEEKEND I HAD A CHANCE TO FILL ANDREAS IN ON THE
10:05AM 4 MEETING."

10:05AM 5 THE REFERENCE TO ANDREAS, IS THAT MR. DRACOPOULOS?

10:05AM 6 A. YES, IT IS.

10:05AM 7 Q. AND THEN YOU CONTINUED, "HOWEVER, BEFORE I HAD A CHANCE TO
10:05AM 8 DESCRIBE THE MEETING, ANDREAS STATED THAT HE SUSPECTED THAT
10:05AM 9 THREE FOUNDATION STAFF MEMBERS WHO WERE THERE WITH ME WERE NOT
10:05AM 10 ABLE TO SEE THE TRUE OPPORTUNITY AND INSTEAD WERE FOCUSSED ON
10:05AM 11 DOTTING EVERY 'I' AND CROSSING EVERY 'T.'"

10:06AM 12 DO YOU SEE THAT?

10:06AM 13 A. I DO SEE THAT.

10:06AM 14 Q. AND THIS WAS BEING -- THIS WAS REPORTED TO YOU BY
10:06AM 15 MR. DRACOPOULOS?

10:06AM 16 A. YES, IT WAS.

10:06AM 17 Q. AND YOU OBSERVED THAT IN THE MEETING; CORRECT?

10:06AM 18 A. I'M NOT, I'M NOT SURE WHAT I OBSERVED IN THE MEETING.

10:06AM 19 Q. OKAY. AND THEN YOU CONTINUED.

10:06AM 20 "NEEDLESS TO SAY, I TOLD HIM THAT WAS EXACTLY HOW IT
10:06AM 21 PROCEEDED. HE ASKED ME TO APOLOGIZE FOR NOT BEING THERE TO CUT
10:06AM 22 THROUGH THE NONSENSE."

10:06AM 23 DO YOU SEE THAT?

10:06AM 24 A. I DO SEE THAT.

10:06AM 25 Q. AND, AGAIN, THAT CAME FROM MR. DRACOPOULOS?

10:06AM 1 A. YES, IT DID.

10:06AM 2 Q. "I HAVE TO FIND A WAY FOR THE TWO OF YOU TO MEET. YOU

10:06AM 3 WOULD ENJOY GETTING TO KNOW HIM AND WOULD UNDOUBTEDLY FIND HIS

10:06AM 4 CANDOR REFRESHING."

10:06AM 5 DO YOU SEE THAT?

10:06AM 6 A. I SEE THAT.

10:06AM 7 Q. AND NOW, ULTIMATELY MR. DRACOPOULOS DID INVEST HIMSELF;

10:06AM 8 CORRECT?

10:06AM 9 A. YES, HE DID.

10:06AM 10 Q. PERSONALLY?

10:06AM 11 A. YES.

10:06AM 12 Q. AND THE FOUNDATION, WHICH WAS REPRESENTED BY THESE OTHER

10:06AM 13 INDIVIDUALS, DECIDED NOT TO INVEST; CORRECT?

10:06AM 14 A. THAT IS CORRECT.

10:06AM 15 Q. AND IS IT CORRECT THAT THE REPRESENTATIVES OF THE

10:07AM 16 FOUNDATION HAD QUESTIONS REGARDING FINANCIAL DETAILS; CORRECT?

10:07AM 17 A. THEY HAD A LOT OF QUESTIONS.

10:07AM 18 Q. OKAY. AND NOT ALL OF THOSE QUESTIONS WERE ANSWERED TO

10:07AM 19 THEIR SATISFACTION; IS THAT FAIR?

10:07AM 20 A. THAT IS CORRECT.

10:07AM 21 Q. AND MR. DRACOPOULOS INVESTED IN THERANOS BEFORE EVER

10:07AM 22 VISITING AND MEETING MS. HOLMES; IS THAT CORRECT?

10:07AM 23 A. THAT'S CORRECT.

10:07AM 24 Q. AND YOU'RE NOT AWARE OF ANY MEETING BETWEEN

10:07AM 25 MR. DRACOPOULOS AND MR. BALWANI; CORRECT?

10:07AM 1 A. I AM NOT.

10:07AM 2 Q. NOW, WE CAN PUT UP ON THE SCREEN EXHIBIT 2065.

10:07AM 3 NOW, 2065 IS AN OCTOBER 10, 2014 EMAIL EXCHANGE,

10:08AM 4 MR. MOSLEY, THAT YOU WERE NOT A PARTY TO, INCLUDING

10:08AM 5 CHRISTIAN HOLMES RELATING TO BDT VISITORS TO WAG SATURDAY.

10:08AM 6 DO YOU SEE THAT?

10:08AM 7 A. THAT'S WHAT IT INDICATES, YES.

10:08AM 8 Q. AND DO YOU REMEMBER YOU WERE SHOWN THIS EMAIL IN YOUR

10:08AM 9 DIRECT EXAMINATION BY MR. SCHENK?

10:08AM 10 DO YOU RECALL THAT?

10:08AM 11 A. YES, I WAS.

10:08AM 12 Q. OKAY. NOW, MR. MOSLEY, YOU HAVE NO IDEA WHETHER

10:08AM 13 MR. BALWANI AGREED TO ANY OF THE PROPOSALS BY MR. HOLMES

10:08AM 14 REFLECTED IN THE EMAIL; CORRECT?

10:08AM 15 A. I DO NOT.

10:08AM 16 Q. OKAY. AND YOU ALSO HAVE NO IDEA WHETHER ANYTHING

10:08AM 17 REFLECTED IN THE EMAIL ACTUALLY HAPPENED OR TOOK PLACE;

10:08AM 18 CORRECT?

10:08AM 19 A. I DO NOT.

10:08AM 20 Q. YOU CAN TAKE THAT DOWN, MR. ALLEN.

10:08AM 21 NOW, MR. MOSLEY, I THINK YOU TESTIFIED YESTERDAY THAT YOU

10:08AM 22 DID NOT ENCOURAGE YOUR CLIENTS TO INVEST IN THERANOS; IS THAT

10:08AM 23 RIGHT?

10:08AM 24 A. I DID NOT. I DID TESTIFY TO THAT EFFECT, YES.

10:08AM 25 Q. OKAY. AND DOES THAT MEAN THAT YOU YOURSELF DID NOT

10:09AM 1 RECOMMEND TO YOUR CLIENTS THAT THEY INVEST IN THERANOS?

10:09AM 2 A. THAT IS CORRECT.

10:09AM 3 Q. IF YOU COULD TAKE A LOOK AT THE BINDER IN FRONT OF YOU,

10:09AM 4 AGAIN, EXHIBIT 14135. 14135.

10:09AM 5 A. I DON'T SEEM TO HAVE THAT. I DON'T HAVE AN EXHIBIT WITH

10:09AM 6 THAT NUMBER ON IT.

10:09AM 7 MR. CAZARES: YOUR HONOR, DOES YOUR HONOR HAVE THE

10:09AM 8 DOCUMENT?

10:09AM 9 THE COURT: NOT IN MY BINDER.

10:09AM 10 MR. CAZARES: IS IT POSSIBLE TO SHOW MR. MOSLEY JUST

10:09AM 11 THE SCREEN OF 14135?

10:09AM 12 THE COURT: DOES THE GOVERNMENT HAVE THIS?

10:09AM 13 MR. SCHENK: I DO NOT.

10:09AM 14 MR. CAZARES: HERE (HANDING). I HAVE ONE COPY.

10:10AM 15 THE COURT: THIS IS ON DISPLAY FOR THE WITNESS ONLY?

10:10AM 16 MR. CAZARES: YES.

10:10AM 17 YOUR HONOR, SHOULD I HAND UP A COPY OR DOES YOUR HONOR

10:10AM 18 HAVE THE SCREEN?

10:10AM 19 THE COURT: I HAVE THE SCREEN AS WELL.

10:10AM 20 MR. CAZARES: OKAY. I APOLOGIZE, YOUR HONOR.

10:10AM 21 Q. HAVE YOU HAD A CHANCE TO LOOK AT THE EXCHANGE, MR. MOSLEY?

10:10AM 22 A. I HAVE.

10:10AM 23 Q. OKAY. THE EXHIBIT 14135 IS AN EMAIL CHAIN, THE LATTER OF

10:10AM 24 WHICH APPEARS TO BE DATED OCTOBER 31, 2014.

10:10AM 25 THAT'S A MESSAGE FROM MS. HOLMES TO YOURSELF.

10:10AM 1 DO YOU SEE THAT?

10:10AM 2 A. I DO SEE THAT.

10:10AM 3 Q. AND THEN WITHIN THE CHAIN, THERE'S A PRIOR EXCHANGE
10:10AM 4 BETWEEN YOURSELF AND MR. CHRISTOPHER BOIES.

10:10AM 5 DO YOU SEE THAT?

10:10AM 6 A. I DO SEE THAT.

10:10AM 7 Q. AND YOUR EXCHANGE WITH MR. CHRISTOPHER BOIES RELATES TO
10:11AM 8 THAT REDEMPTION RIGHTS ISSUE; CORRECT?

10:11AM 9 A. YES, IT DOES.

10:11AM 10 MR. CAZARES: MOVE TO ADMIT 14135, YOUR HONOR.

10:11AM 11 MR. SCHENK: NO OBJECTION.

10:11AM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:11AM 13 (DEFENDANT'S EXHIBIT 14135 WAS RECEIVED IN EVIDENCE.)

10:11AM 14 BY MR. CAZARES:

10:11AM 15 Q. NOW, YOU DON'T SEE MR. BALWANI COPIED ON THIS MESSAGE;
10:11AM 16 CORRECT?

10:11AM 17 A. I DO NOT.

10:11AM 18 Q. OKAY. IT'S JUST YOURSELF AND MS. HOLMES IN THE LATTER
10:11AM 19 MESSAGES?

10:11AM 20 A. AND CHRISTOPHER BOIES.

10:11AM 21 Q. OKAY. AND FOCUSING ON THE SECOND MESSAGE FROM THE TOP
10:11AM 22 FROM YOURSELF TO MR. BOIES, YOU WROTE, "CHRIS,

10:11AM 23 "I AM MORE THAN OKAY WITHOUT IT AND HOPE ELIZABETH DOES
10:11AM 24 NOT THINK IT NECESSARY."

10:11AM 25 THAT'S RELATING TO THE REDEMPTION RIGHTS ISSUE; IS THAT

10:11AM 1
10:11AM 2
10:11AM 3
10:11AM 4
10:12AM 5
10:12AM 6
10:12AM 7
10:12AM 8
10:12AM 9
10:12AM 10
10:12AM 11
10:12AM 12
10:12AM 13
10:12AM 14
10:12AM 15
10:12AM 16
10:12AM 17
10:12AM 18
10:12AM 19
10:12AM 20
10:13AM 21
10:13AM 22
10:13AM 23
10:13AM 24
10:13AM 25

CORRECT?

A. THAT IS CORRECT.

Q. AND THEN I WROTE, "IF I DO NOT HAVE DEEP TRUST AND FAITH
IN ELIZABETH, I WOULD NOT BE INVOLVED WITH THERANOS AND
RECOMMENDING AN INVESTMENT BY MY CLIENTS."

DO YOU SEE THAT?

A. I DO SEE THAT.

Q. AND THOSE ARE YOUR WORDS?

A. THOSE ARE MY WORDS.

Q. THEN YOU WROTE, "I TOLD ELIZABETH EARLY ON THAT I WAS
INCREDIBLY APPRECIATIVE TO HAVE AN OPPORTUNITY TO BE INVOLVED
WITH HER AND THERANOS AND I FEEL EVEN MORE SO AT THIS POINT."

DO YOU SEE THAT?

A. I DO SEE THAT.

Q. YOU CAN SET THAT ASIDE.

NOW, MR. MOSLEY, YESTERDAY YOU TESTIFIED THAT YOU DID NOT
KNOW THAT THERE WERE SOME TESTS THAT THERANOS COULD NOT YET RUN
ON ITS FINGERSTICK TECHNOLOGY; CORRECT?

A. I DID.

Q. OKAY. NOW -- BUT AT SOME POINT MS. HOLMES TOLD YOU THAT
THERANOS COULD NOT DO ALL OF THE TESTS THAT PATIENTS MIGHT
ORDER; IS THAT RIGHT?

A. I DON'T REMEMBER. I DON'T REMEMBER WHETHER SHE TOLD ME,
AND IF SHE DID, I DON'T KNOW WHEN SHE WOULD HAVE TOLD ME.

BUT CERTAINLY AT THIS POINT I DID NOT KNOW THAT.

10:13AM 1 Q. AND YOU WERE TOLD BY MS. HOLMES THAT AT VARIOUS TIMES IT
10:13AM 2 COULD NOT DO ALL OF THE TESTS; CORRECT?
10:13AM 3 A. I WAS NOT TOLD THAT.
10:13AM 4 Q. OKAY. IF YOU CAN TAKE OUT THE STATEMENTS BINDER, THERE
10:13AM 5 SHOULD BE A WHITE BINDER THERE WITH -- IT'S VOLUME 2.
10:13AM 6 A. YOU MEAN FROM THE GOVERNMENT?
10:13AM 7 Q. FROM THE DEFENSE?
10:13AM 8 A. I HAVE A VOLUME 2. IT DOESN'T --
10:13AM 9 Q. OKAY.
10:13AM 10 A. -- SAY STATEMENTS, BUT --
10:14AM 11 Q. LOOK AT EXHIBIT 28040, 28040.
10:14AM 12 A. I HAVE IT.
10:14AM 13 Q. AND GO TO PAGE 134.
10:14AM 14 YOUR HONOR, 134 AT LINES 16 TO 23.
10:14AM 15 DO YOU SEE THAT, MR. MOSLEY?
10:14AM 16 A. I DO.
10:14AM 17 MR. CAZARES: YOUR HONOR, I'D LIKE TO PUBLISH.
10:14AM 18 THE COURT: WHY DON'T YOU LAY A FOUNDATION FOR HIM?
10:14AM 19 MR. CAZARES: YES, YOUR HONOR.
10:14AM 20 Q. MR. MOSLEY, YOU TESTIFIED YESTERDAY THAT YOU RECALL
10:14AM 21 TESTIFYING IN A DEPOSITION RELATING TO THERANOS A COUPLE OF
10:14AM 22 YEARS AGO; CORRECT?
10:14AM 23 A. YES, I DID.
10:14AM 24 Q. AND IN THE DEPOSITION, OF COURSE, YOU SWORE TO TELL THE
10:14AM 25 TRUTH; CORRECT?

10:14AM 1 A. I DID.

10:14AM 2 Q. AND YOU DID YOUR BEST TO TELL THE TRUTH AT THE TIME;

10:14AM 3 CORRECT?

10:14AM 4 A. I DID.

10:15AM 5 Q. AND WHAT YOU'RE LOOKING AT HERE IN THE TRANSCRIPT, THIS IS

10:15AM 6 A TRANSCRIPT FROM YOUR DEPOSITION; CORRECT?

10:15AM 7 A. YES.

10:15AM 8 Q. OKAY.

10:15AM 9 YOUR HONOR, I'D LIKE TO PUBLISH.

10:15AM 10 THE COURT: LINES?

10:15AM 11 MR. CAZARES: 16 TO 23, AND THAT'S ALL.

10:15AM 12 THE COURT: ALL RIGHT.

10:15AM 13 MR. CAZARES: THANK YOU, YOUR HONOR.

10:15AM 14 Q. SO, MR. MOSLEY, FROM YOUR DEPOSITION YOU'LL SEE THE

10:15AM 15 QUESTION PUT TO YOU AT THE TIME WAS: "SO AT SOME POINT

10:15AM 16 ELIZABETH TOLD YOU THAT THERANOS COULDN'T DO ALL OF THE TESTS

10:15AM 17 THAT PATIENTS MIGHT ORDER; IS THAT RIGHT?"

10:15AM 18 DO YOU SEE THAT?

10:15AM 19 A. I DO SEE THAT.

10:15AM 20 Q. AND THEN YOU ANSWER: "I BELIEVE I WAS TOLD THAT AT

10:15AM 21 THAT -- AT VARIOUS TIMES IT COULD NOT DO ALL THE TESTS."

10:15AM 22 DO YOU SEE THAT?

10:15AM 23 A. YES, I DO.

10:15AM 24 Q. AND THOSE ARE YOUR WORDS?

10:15AM 25 A. THOSE ARE MY WORDS.

10:16AM 1 Q. YOU CAN TAKE THAT DOWN.

10:16AM 2 JUST ONE MOMENT, YOUR HONOR.

10:16AM 3 MAY I HAVE A MOMENT TO CONFER, YOUR HONOR?

10:16AM 4 THE COURT: YES.

10:16AM 5 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

10:16AM 6 MR. CAZARES: NO FURTHER QUESTIONS, YOUR HONOR.

10:16AM 7 THANK YOU, MR. MOSLEY.

10:16AM 8 THE COURT: REDIRECT.

10:16AM 9 **REDIRECT EXAMINATION**

10:17AM 10 BY MR. SCHENK:

10:17AM 11 Q. GOOD MORNING, MR. MOSLEY.

10:17AM 12 A. GOOD MORNING.

10:17AM 13 Q. I WANT TO FOLLOW UP ON JUST TWO LINES OF QUESTIONING THAT

10:17AM 14 THE DEFENSE COVERED WITH YOU ON CROSS-EXAMINATION.

10:17AM 15 THE FIRST -- IF WE COULD BRING UP EXHIBIT 3387.

10:17AM 16 YOUR HONOR, THIS WAS ADMITTED PREVIOUSLY.

10:17AM 17 AND PAGE 280.

10:17AM 18 THE COURT: YES.

10:17AM 19 MR. SCHENK: THANK YOU.

10:17AM 20 Q. MR. MOSLEY, DO YOU RECALL THIS BEING ONE OF THE SLIDES

10:17AM 21 THAT WAS LOCATED WITHIN THE BINDER OF MATERIAL THAT YOU

10:17AM 22 RECEIVED FROM MS. HOLMES UNDER THE COVER LETTER THAT YOU AND I

10:17AM 23 DISCUSSED?

10:17AM 24 A. YES, I DO.

10:17AM 25 Q. AND MR. CAZARES JUST SHOWED YOU SOME PRIOR TESTIMONY ABOUT

10:17AM 1 THIS ISSUE OF SORT OF KNOWING THE NUMBER OF TESTS THAT THERANOS
10:17AM 2 WAS CAPABLE OF RUNNING.

10:17AM 3 DO YOU RECALL THAT LINE OF QUESTIONING?

10:17AM 4 A. I DO.

10:17AM 5 Q. DID THE MATERIAL THAT YOU REVIEWED BEFORE MAKING A
10:17AM 6 DISCUSSION TO INVEST INFORM YOU THAT THERANOS COULD RUN
10:18AM 7 COMPREHENSIVE TESTS?

10:18AM 8 A. YES, IT DID.

10:18AM 9 Q. EXPLAIN TO THE JURY THEN, IF YOU WOULD, WHAT YOUR
10:18AM 10 UNDERSTANDING WAS REGARDING THE CURRENT TESTING CAPABILITY OF
10:18AM 11 THERANOS BEFORE YOU MADE A DECISION TO INVEST?

10:18AM 12 A. YOU KNOW, IT WAS MY UNDERSTANDING THAT IT COULD RUN ALL OF
10:18AM 13 THE TESTS THAT WERE NORMALLY PERFORMED BY VARIOUS LABS.

10:18AM 14 SO IT WAS CAPABLE OF RUNNING THE FULL SET OF TESTS THAT
10:18AM 15 LABS WERE RUNNING.

10:18AM 16 Q. AND THIS WAS WITHIN THE BINDER OF MATERIAL THAT YOU
10:18AM 17 RECEIVED; IS THAT CORRECT?

10:18AM 18 A. THAT IS CORRECT.

10:18AM 19 Q. AND I WANT TO TALK JUST BRIEFLY WITH YOU ABOUT THE SOURCES
10:18AM 20 OF INFORMATION, THAT SORT OF THE BUCKET OF INFORMATION THAT YOU
10:18AM 21 HAD WHEN YOU MADE THE DECISION TO INVEST AT THE END OF OCTOBER.

10:18AM 22 A. RIGHT.

10:18AM 23 Q. WAS THE BINDER OF MATERIAL AMONG THE INFORMATION THAT YOU
10:18AM 24 RELIED ON WHEN YOU MADE THE INVESTMENT DECISION?

10:18AM 25 A. ABSOLUTELY.

10:18AM 1 Q. AND THEN YOU COVERED WITH MR. CAZARES TWO IN-PERSON
10:18AM 2 MEETINGS IN PALO ALTO IN OCTOBER.

10:19AM 3 A. YES.

10:19AM 4 Q. WAS THE CONTENT OF THOSE MEETINGS AS WELL A SOURCE OF
10:19AM 5 INFORMATION WHEN YOU DECIDED TO INVEST?

10:19AM 6 A. YES, ABSOLUTELY.

10:19AM 7 Q. AND WAS MS. HOLMES PRESENT FOR THOSE TWO MEETINGS?

10:19AM 8 A. YES, SHE WAS.

10:19AM 9 Q. AND WAS MR. BALWANI PRESENT FOR THOSE TWO MEETINGS?

10:19AM 10 A. YES, HE WAS.

10:19AM 11 Q. YOU ALSO LOOKED AT A DOCUMENT -- I DON'T HAVE A COPY TO
10:19AM 12 SHOW YOU, I DON'T THINK YOU HAVE A COPY -- IF YOU COULD DO IT
10:19AM 13 FROM MEMORY, IT WAS 14135, THE ONE WITH CHRISTOPHER BOIES.

10:19AM 14 A. YES.

10:19AM 15 Q. YOU RECALL YOU USED THE PHRASE "RECOMMENDING INVESTMENT"?

10:19AM 16 A. YES.

10:19AM 17 Q. DO YOU RECALL THAT?

10:19AM 18 A. YES, I DID.

10:19AM 19 Q. AND SO I THINK YOU TESTIFIED, BOTH ON DIRECT AND CROSS,
10:19AM 20 THAT YOU DID NOT RECOMMEND AN INVESTMENT TO YOUR CLIENTS, AN
10:19AM 21 INVESTMENT IN THERANOS TO YOUR CLIENTS.

10:19AM 22 DO YOU RECALL THAT TESTIMONY?

10:19AM 23 A. YES, I DO.

10:19AM 24 Q. BUT IN THAT EMAIL WE SAW THE WORD "RECOMMENDING."

10:19AM 25 A. RIGHT.

10:19AM 1 Q. EXPLAIN WHAT IS GOING ON HERE?

10:19AM 2 A. YOU KNOW, OBVIOUSLY IT WASN'T A GOOD USE OF WORDS BECAUSE
10:19AM 3 I THINK, AS I'VE TESTIFIED, VARIOUS OF MY CLIENTS HAD BEEN
10:19AM 4 INTRODUCED TO THERANOS AND TO ELIZABETH HOLMES, AND THEY WERE
10:20AM 5 OFF DOING THEIR OWN DUE DILIGENCE AS EVIDENCED BY ALL OF THE
10:20AM 6 OTHER EMAILS ABOUT THEIR TRIPS OUT THERE.

10:20AM 7 YOU KNOW, CLEARLY I WAS DISCUSSING THERANOS WITH THOSE
10:20AM 8 CLIENTS. THEY WERE GOOD CLIENTS, AND PEOPLE I KNEW WELL, SO I
10:20AM 9 WAS CLEARLY DISCUSSING IT WITH THEM.

10:20AM 10 BUT, YOU KNOW, I'M A LAWYER. I'M NOT AN INVESTMENT
10:20AM 11 ADVISOR.

10:20AM 12 I DON'T THINK ANY RECOMMENDATION I WOULD MAKE WOULD -- I
10:20AM 13 WOULD NOT MAKE A RECOMMENDATION ON AN INVESTMENT.

10:20AM 14 Q. THANK YOU.

10:20AM 15 SO, BOTTOM LINE, DID YOU RECOMMEND THAT YOUR CLIENTS
10:20AM 16 INVEST IN THERANOS?

10:20AM 17 A. I DID NOT.

10:20AM 18 Q. THANK YOU.

10:20AM 19 NO FURTHER QUESTIONS, YOUR HONOR.

10:20AM 20 THE COURT: RECROSS?

10:20AM 21 MR. CAZARES: NO. THANK YOU, YOUR HONOR.

10:20AM 22 THE COURT: MAY THIS WITNESS BE EXCUSED?

10:20AM 23 MR. CAZARES: YES, YOUR HONOR.

10:20AM 24 MR. SCHENK: YES, YOUR HONOR.

10:20AM 25 THE COURT: THANK YOU, SIR. YOU MAY BE EXCUSED.

10:20AM 1 THE WITNESS: THANK YOU. I APPRECIATE IT.

10:20AM 2 THE COURT: YOU'RE WELCOME.

10:21AM 3 DOES THE GOVERNMENT HAVE AN ADDITIONAL WITNESS TO CALL?

10:21AM 4 MR. BOSTIC: YES, YOUR HONOR.

10:21AM 5 THE UNITED STATES CALLED ALAN EISENMAN.

10:21AM 6 THE COURT: SIR, IF YOU WOULD COME FORWARD AND STAND

10:21AM 7 JUST THERE WHILE YOU FACE OUR COURTROOM DEPUTY WITH YOUR RIGHT

10:22AM 8 HAND RAISED, SHE HAS A QUESTION FOR YOU.

10:22AM 9 **(GOVERNMENT'S WITNESS, ALAN EISENMAN, WAS SWORN.)**

10:22AM 10 THE WITNESS: YES, I DO.

10:22AM 11 THE CLERK: THANK YOU.

10:22AM 12 THE WITNESS: YOU'RE WELCOME.

10:22AM 13 THE COURT: PLEASE HAVE A SEAT HERE, SIR, AND MAKE

10:22AM 14 YOURSELF COMFORTABLE.

10:22AM 15 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU

10:22AM 16 NEED.

10:22AM 17 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

10:22AM 18 AND THEN SPELL IT, PLEASE.

10:22AM 19 THE WITNESS: MASK ON OR OFF?

10:22AM 20 THE COURT: ARE YOU FULLY VACCINATED, SIR?

10:22AM 21 THE WITNESS: I AM.

10:22AM 22 THE COURT: YOU MAY TAKE IT OFF.

10:22AM 23 THE WITNESS: THANK YOU.

10:22AM 24 ALAN JAY EISENMAN.

10:22AM 25 THE COURT: AND IF YOU WOULD SPELL IT, PLEASE.

10:22AM 1 THE WITNESS: A-L-A-N, J-A-Y, E-I-S-E-N-M-A-N.

10:22AM 2 THE COURT: THANK YOU. COUNSEL.

10:23AM 3 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:23AM 4 **DIRECT EXAMINATION**

10:23AM 5 BY MR. BOSTIC:

10:23AM 6 Q. GOOD MORNING, MR. EISENMAN.

10:23AM 7 A. GOOD MORNING.

10:23AM 8 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

10:23AM 9 THE COURT: YES.

10:23AM 10 MR. BOSTIC: (HANDING.)

10:23AM 11 Q. MR. EISENMAN, I'VE JUST HANDED YOU A DOCUMENT OF SOME
10:23AM 12 MATERIALS THAT I WOULD LIKE TO DISCUSS WITH YOU THIS MORNING.

10:23AM 13 BUT FIRST LET ME ASK YOU SOME PRELIMINARY QUESTIONS.

10:23AM 14 WERE YOU AT ONE TIME AN INVESTOR IN A COMPANY CALLED
10:23AM 15 THERANOS?

10:23AM 16 A. YES.

10:23AM 17 Q. LET ME GET SOME BACKGROUND ABOUT YOU BEFORE WE TALK ABOUT
10:23AM 18 YOUR DEALINGS WITH THE COMPANY.

10:23AM 19 FIRST OF ALL, WHERE DO YOU LIVE?

10:23AM 20 A. HOUSTON, TEXAS.

10:23AM 21 Q. AND ARE YOU CURRENTLY EMPLOYED?

10:23AM 22 A. I'M NOT.

10:23AM 23 Q. WHEN YOU WERE EMPLOYED, WHAT WAS YOUR PROFESSION?

10:23AM 24 A. EARLY IN MY CAREER I DID SOME ESTATE AND TAX LEGAL WORK; I
10:23AM 25 DID SOME ACCOUNTING WORK.

10:23AM 1 LATER IN MY CAREER I GOT A SERIES 7 AND BECAME A WEALTH
10:23AM 2 MANAGER AND WAS INVOLVED IN SECURITIES WITH CLIENTS WITH
10:24AM 3 INVESTMENTS, PUBLIC -- I'M SORRY, PUBLIC INVESTMENTS WITH
10:24AM 4 CLIENTS.

10:24AM 5 Q. AND WERE YOU AN INVESTMENT ADVISOR?

10:24AM 6 A. NO, I WAS NOT AN RIA, REGISTERED INVESTMENT ADVISOR, BUT I
10:24AM 7 WAS A CFP, A CERTIFIED FINANCIAL PLANNER.

10:24AM 8 Q. AND WHEN DID YOU RETIRE FROM THAT WORK?

10:24AM 9 A. ABOUT FIVE OR SIX YEARS AGO.

10:24AM 10 Q. CAN YOU GIVE US A BRIEF SUMMARY OF YOUR EDUCATIONAL
10:24AM 11 BACKGROUND BEFORE YOU STARTED WORKING IN THOSE ROLES?

10:24AM 12 A. SURE.

10:24AM 13 I DID MY UNDERGRADUATE WORK AT UNIVERSITY OF TEXAS AT
10:24AM 14 AUSTIN.

10:24AM 15 MY DEGREE WAS IN A PROGRAM CALLED PLAN 2, WHICH IS A
10:24AM 16 LIBERAL ARTS HONORS PROGRAM, AND IT WAS PRIMARILY FOR PEOPLE
10:24AM 17 WHO WERE DOING PRELAW, PREMED.

10:24AM 18 I WAS PRELAW AT THE TIME.

10:24AM 19 I WENT TO LAW SCHOOL IN 1977 TO 1980 AT UNIVERSITY OF
10:24AM 20 HOUSTON LAW SCHOOL.

10:24AM 21 THAT THE EXTENT OF MY EDUCATION.

10:24AM 22 Q. AND YOU MENTIONED THAT YOU HAD DONE SOME LEGAL WORK. DID
10:25AM 23 YOU EVER PRACTICE AS A LAWYER?

10:25AM 24 A. YES, I DID.

10:25AM 25 Q. AND APPROXIMATELY FOR HOW LONG?

10:25AM 1 A. JUST MY FIRST FEW YEARS OUT OF LAW SCHOOL I DID SOME
10:25AM 2 ESTATE PLANNING AND TAX WORK, TRUSTS, WILLS, TAX RETURNS.

10:25AM 3 BY THE WAY, MY FIRST YEAR OUT OF LAW SCHOOL, I DID A YEAR
10:25AM 4 OF TAX WORK AT COOPERS & LYBRAND. THEY WERE WHAT WAS CALLED
10:25AM 5 THE BIG EIGHT ACCOUNTING FIRMS. THAT WAS ONE OF THE BIG EIGHT
10:25AM 6 ACCOUNTING FIRMS.

10:25AM 7 Q. AND IN THAT ROLE, WERE YOU WORKING AS AN ACCOUNTANT?

10:25AM 8 A. I WAS WORKING AS AN ACCOUNTANT, BUT NOT A CPA, BECAUSE THE
10:25AM 9 REQUIREMENT IN TEXAS IS THAT YOU HAD TO HAVE A YEAR OF
10:25AM 10 EXPERIENCE BEFORE YOU COULD SIT FOR THE CPA EXAM.

10:25AM 11 Q. DID YOU EVER BECOME A CPA?

10:25AM 12 A. I DID.

10:25AM 13 Q. IN THE 2005, 2006 TIME PERIOD, WHERE WERE YOU EMPLOYED?

10:25AM 14 A. I WAS SELF-EMPLOYED AT THAT TIME PERIOD.

10:26AM 15 Q. AND WHAT KIND OF WORK WERE YOU DOING IN 2005, 2006?

10:26AM 16 A. I WAS PRIMARILY INVESTING IN LISTED SECURITIES FOR
10:26AM 17 CLIENTS.

10:26AM 18 Q. IN ADDITION TO THAT, DID YOU ALSO ENGAGE IN SOME
10:26AM 19 INVESTMENT ACTIVITY OF PERSONAL OR FAMILY MONEY?

10:26AM 20 A. YES, I DID.

10:26AM 21 Q. AND WHEN DID YOU FIRST BECOME AWARE OF A COMPANY CALLED
10:26AM 22 THERANOS?

10:26AM 23 A. IT WAS IN THAT 2005, 2006 PERIOD.

10:26AM 24 Q. PRIOR TO THAT TIME PERIOD, HAD YOU HAD ANY EXPERIENCE IN
10:26AM 25 INVESTING IN SCIENCE OR BIOTECHNOLOGY COMPANIES?

10:26AM 1

A. NO.

10:26AM 2

Q. AND HOW DID YOU FIRST HEAR ABOUT THERANOS?

10:26AM 3

A. I HAD A FRIEND THAT WAS THE WEALTH MANAGER FOR ELIZABETH'S

10:26AM 4

PARENTS AND THEY WERE DOING AN EARLY ROUND. THIS WAS THEIR

10:27AM 5

SECOND SEED ROUND.

10:27AM 6

HE HAD PARTICIPATED IN THE FIRST, AND HE HAD A GROUP OF

10:27AM 7

FRIENDS THAT WERE INVESTING IN THE EARLY SEED ROUNDS.

10:27AM 8

Q. AND JUST TO FOLLOW UP ON TWO THINGS.

10:27AM 9

YOU SAID ELIZABETH. ARE YOU REFERRING TO

10:27AM 10

ELIZABETH HOLMES?

10:27AM 11

A. YES.

10:27AM 12

Q. AND YOU SAID THAT AT THE TIME THAT YOU UNDERSTOOD THE

10:27AM 13

COMPANY WAS DOING A ROUND.

10:27AM 14

CAN YOU EXPLAIN WHAT THAT MEANS?

10:27AM 15

A. YES. COMPANIES HAVE TO DO FUND RAISING TO EXIST, AND THEY

10:27AM 16

HAD RAISED MONEY I BELIEVE IN 2004. I WASN'T AWARE OF THE

10:27AM 17

COMPANY AT THAT POINT.

10:27AM 18

BUT THEY WERE DOING A SECOND ROUND, RAISING MORE MONEY TO

10:27AM 19

GIVE THEM MORE WHAT IS CALLED RUNWAY. IT GIVES THEM MORE TIME

10:27AM 20

TO DEVELOP.

10:27AM 21

AND I WAS MADE AWARE OF THE COMPANY AND INVESTED IN THE

10:27AM 22

SECOND ROUND IN 2006.

10:27AM 23

Q. BEFORE YOU INVESTED IN THERANOS IN 2006, DID YOU HAVE THE

10:27AM 24

OPPORTUNITY TO HAVE ANY CONVERSATIONS WITH ELIZABETH HOLMES?

10:27AM 25

A. YES, I DID.

10:27AM 1 Q. AND WHAT DO YOU RECALL ABOUT THOSE CONVERSATIONS
10:28AM 2 GENERALLY?

10:28AM 3 A. AT THE TIME --

10:28AM 4 MS. WALSH: OBJECTION, YOUR HONOR. THIS GOES -- WE
10:28AM 5 PREVIOUSLY DISCUSSED THIS, THIS TIME PERIOD THAT IS OUTSIDE OF
10:28AM 6 THE RELEVANT TIME PERIOD.

10:28AM 7 WE HAVE -- WE WILL BE OBJECTING TO THOSE QUESTIONS, OR
10:28AM 8 MAYBE WE CAN LODGE A STANDING OBJECTION TO THIS TIME PERIOD.

10:28AM 9 THE COURT: ALL RIGHT. THANK YOU.

10:28AM 10 MR. BOSTIC, IS THIS FOUNDATIONAL?

10:28AM 11 MR. BOSTIC: IT IS, YOUR HONOR.

10:28AM 12 I THINK ALL OF THE INFORMATION THAT HE GAINED LEADING UP
10:28AM 13 TO THE SECOND INVESTMENT THAT WE'RE GOING TO TALK ABOUT IS
10:28AM 14 RELEVANT TO HIS DECISION MAKING.

10:28AM 15 THE COURT: THE OBJECTION IS NOTED. IT'S OVERRULED.

10:28AM 16 AND THIS IS FOUNDATIONAL FOR SUBSEQUENT CONDUCT.

10:28AM 17 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:28AM 18 THE COURT: SO WHY DON'T YOU ASK THE QUESTION AGAIN?

10:28AM 19 BY MR. BOSTIC:

10:28AM 20 Q. THE QUESTION WAS, MR. EISENMAN, YOU REFERRED TO
10:28AM 21 CONVERSATIONS THAT YOU HAD WITH MS. HOLMES AROUND THE TIME OF
10:28AM 22 THAT 2006 INVESTMENT.

10:28AM 23 DO YOU RECALL THOSE CONVERSATIONS?

10:28AM 24 A. I DO, YES.

10:28AM 25 Q. AND GENERALLY SPEAKING, WHAT DID MS. HOLMES TELL YOU ABOUT

10:28AM 1 THERANOS AT THAT TIME?

10:28AM 2 A. SHE TOLD ME THAT THEY CURRENTLY HAD CONTRACTS WITH FOUR
10:29AM 3 MAJOR INTERNATIONAL PHARMACEUTICAL COMPANIES.

10:29AM 4 SHE TOLD ME THAT THEY WERE GOING TO HAVE SIGNIFICANCE
10:29AM 5 REVENUE GROWTH OVER THE NEXT TWO YEARS, I BELIEVE IT WAS
10:29AM 6 SOMEWHERE IN THE NEIGHBORHOOD OF 40 TO \$50 MILLION IN REVENUE
10:29AM 7 THE VERY NEXT YEAR AFTER THIS ROUND, AND SHE ANTICIPATED \$200
10:29AM 8 TO \$300 MILLION IN REVENUE THE SECOND YEAR AFTER THIS ROUND.

10:29AM 9 SHE ALSO SAID THAT LARRY ELLISON, WHO WAS A CREDIBLE
10:29AM 10 BUSINESS PERSON, WAS HER ADVISOR, WAS INVESTING IN THESE
10:29AM 11 ROUNDS, AND THAT HE WAS ONE OF HER MENTORS.

10:29AM 12 Q. AND AROUND THAT TIME PERIOD, DID YOU CONTINUE TO HAVE
10:29AM 13 ADDITIONAL CONVERSATIONS WITH MS. HOLMES?

10:29AM 14 A. YES.

10:29AM 15 Q. HOW ACCESSIBLE WAS MS. HOLMES TO YOU AROUND THAT TIME
10:29AM 16 PERIOD?

10:29AM 17 A. VERY ACCESSIBLE.

10:29AM 18 FOR THE FIRST TWO OR THREE YEARS, WE SCHEDULED AND HAD A
10:30AM 19 QUARTERLY UPDATE CALL. SOMETIMES IT WAS ME. SOMETIMES IT WAS
10:30AM 20 OUR GROUP OF HOUSTON INVESTORS.

10:30AM 21 OCCASIONALLY THERE WOULD BE AN ISSUE WHERE WE WOULD REACH
10:30AM 22 OUT TO HER IN ADDITION TO THE QUARTERLY CALLS, AND SHE WAS VERY
10:30AM 23 ACCESSIBLE.

10:30AM 24 Q. AND HOW DID YOU CONTACT MS. HOLMES? WHAT CONTACT
10:30AM 25 INFORMATION DID YOU HAVE FOR HER?

10:30AM 1
10:30AM 2
10:30AM 3
10:30AM 4
10:30AM 5
10:30AM 6
10:30AM 7
10:30AM 8
10:30AM 9
10:30AM 10
10:30AM 11
10:30AM 12
10:30AM 13
10:31AM 14
10:31AM 15
10:31AM 16
10:31AM 17
10:31AM 18
10:31AM 19
10:31AM 20
10:31AM 21
10:31AM 22
10:31AM 23
10:31AM 24
10:31AM 25

A. WE HAD HER PERSONAL CELL NUMBER.

Q. AND, GENERALLY SPEAKING, WAS SHE RESPONSIVE TO YOUR INQUIRIES DURING THAT TIME PERIOD?

A. YES, SHE WAS.

Q. WHAT CAN YOU TELL ME ABOUT, FROM YOUR CONVERSATIONS WITH MS. HOLMES, WHAT WAS YOUR UNDERSTANDING OF THE BUSINESS THAT THE COMPANY WAS IN AND WHAT KIND OF TECHNOLOGY THE COMPANY HAD?

AND THIS IS, AGAIN, BACK IN THE 2006 TIMEFRAME.

A. THEY HAD A TECHNOLOGY THAT WOULD TAKE A MUCH SMALLER SAMPLE OF BLOOD THAN CONVENTIONAL TECHNOLOGY, COULD RUN A MULTIPLE OF TESTS AT THE SAME TIME, AND GET RESULTS BACK WITHIN A PERIOD OF HOURS.

Q. AND FROM YOUR DISCUSSIONS WITH MS. HOLMES, WHAT DID YOU UNDERSTAND ABOUT THE STATE OF THE TECHNOLOGY, HOW FAR ALONG IT WAS?

A. WE UNDERSTOOD THAT THE TECHNOLOGY WORKED AT THE EARLY STAGE; THAT IT WAS BEING ACCEPTED IN THE MARKETPLACE.

THERE WAS SOME TESTING GOING ON WITH PHARMACEUTICAL COMPANIES. IT WAS BEING USED FOR BLOOD TESTING, BLOOD DOSING, CHECKING ADVERSE REACTIONS WHEN YOU HAVE MULTIPLE PRODUCTS IN A BODY.

Q. WHAT WAS YOUR UNDERSTANDING ABOUT ANY DEVELOPMENT THAT STILL HAD TO HAPPEN WITH THE TECHNOLOGY, IF YOU HAD AN UNDERSTANDING?

A. YEAH. WELL, LIKE ANYTHING ELSE, LIKE THE IPHONE OR

10:31AM 1 ANYTHING ELSE, IT WAS AN EARLY STAGE, BUT APPARENTLY IT WAS AT
10:31AM 2 A STAGE WHERE IT WAS SUCCESSFUL IN WORKING, BUT IT WAS GOING TO
10:31AM 3 BE DEVELOPED AND IMPROVED.

10:31AM 4 Q. AND AS AN INVESTOR LOOKING INTO A COMPANY LIKE THIS, WAS
10:31AM 5 THE STATE OF THE TECHNOLOGY AN IMPORTANT FACT FOR YOU?

10:32AM 6 A. YES.

10:32AM 7 Q. HOW DID YOUR UNDERSTANDING THAT THIS WAS EARLY STAGE
10:32AM 8 TECHNOLOGY AFFECT YOUR VIEW OF THE RISK OF THE INVESTMENT?

10:32AM 9 A. UM, FOR AN EARLY STAGE COMPANY, I ASSESSED THE RISK BEING
10:32AM 10 LOWER THAN MOST EARLY STAGE COMPANIES BECAUSE THEY HAD A
10:32AM 11 TECHNOLOGY, IT HAD MARKET ACCEPTANCE, IT WAS BEING USED BY FOUR
10:32AM 12 INTERNATIONAL PHARMACEUTICAL COMPANIES.

10:32AM 13 THERE WAS THE CREDIBLE BOARD MEMBER ADVISOR,
10:32AM 14 LARRY ELLISON.

10:32AM 15 AND IN THAT EARLY CONVERSATION BEFORE WE MADE OUR FIRST
10:32AM 16 INVESTMENT, A PROJECTION OF \$200 TO \$300 MILLION IN REVENUES,
10:32AM 17 ONLY TWO YEARS AFTER WE WERE PUTTING -- MAKING OUR INVESTMENT.

10:32AM 18 AND THE WHOLE VALUE OF THE COMPANY AT THIS STAGE WAS
10:32AM 19 \$150 MILLION, AND IN TWO YEARS WE WERE UNDER THE IMPRESSION,
10:33AM 20 FROM OUR CONVERSATION WITH ELIZABETH, THAT SHE THOUGHT THEY
10:33AM 21 WERE GOING TO GENERATE \$200 TO \$300 MILLION IN REVENUES IN TWO
10:33AM 22 YEARS. THAT WAS A VERY, VERY RARE INVESTMENT OPPORTUNITY.

10:33AM 23 Q. YOU'RE TALKING ABOUT FACTS YOU BELIEVED TO BE TRUE AT THE
10:33AM 24 TIME ABOUT THE COMPANY?

10:33AM 25 A. YES.

10:33AM 1 Q. AND WHAT WAS YOUR SOURCE OF INFORMATION ABOUT THE COMPANY
10:33AM 2 DURING THIS TIME PERIOD?

10:33AM 3 A. ELIZABETH HOLMES.

10:33AM 4 Q. DURING YOUR CONVERSATIONS WITH MS. HOLMES, DID YOU TAKE
10:33AM 5 NOTES?

10:33AM 6 A. I DID.

10:33AM 7 Q. AND HAVE YOU REVIEWED THOSE NOTES SUBSEQUENT, IN BETWEEN
10:33AM 8 WHEN THOSE CONVERSATIONS HAPPENED AND TESTIFYING TODAY?

10:33AM 9 A. YES, I HAVE.

10:33AM 10 Q. DO YOU REMEMBER MS. HOLMES TELLING YOU DURING THAT TIME
10:33AM 11 PERIOD ANYTHING ABOUT THE COMPANY AND ITS PROFITABILITY?

10:33AM 12 A. WHICH TIME PERIOD? ARE YOU TALKING ABOUT BEFORE MY FIRST
10:33AM 13 INVESTMENT OR THE 2006, '07, '08?

10:34AM 14 Q. LET'S TALK GENERALLY ABOUT THE 2006 TO 2008 TIME PERIOD.

10:34AM 15 A. OKAY. YES, I DO.

10:34AM 16 I RECALL THAT THEY HAD ONE ANNUAL MEETING IN THE WHOLE
10:34AM 17 HISTORY OF THE COMPANY THAT I TOOK NOTES, AND IN THAT ANNUAL
10:34AM 18 MEETING THEY WERE DOING SOME MULTIPLE TESTS WITH BRISTOL MYERS
10:34AM 19 I REMEMBER, QUOTE-UNQUOTE; THE TESTS WERE FLAWLESS, IT WAS LIKE
10:34AM 20 A 747 TAKING OFF.

10:34AM 21 THERE WAS AN IMPRESSION AFTER THAT ANNUAL MEETING, THE
10:34AM 22 YEAR OR SO AFTER WE INVESTED, THAT THEY WERE GAINING MARKET
10:34AM 23 ACCEPTANCE.

10:34AM 24 THE OTHER THING THAT CAME FROM THAT MEETING AND OTHER
10:34AM 25 CONVERSATIONS WAS THAT THEY WERE ALSO CAPTURING VALUABLE DATA

10:34AM 1 DOING THESE STUDIES WITH PHARMACEUTICAL COMPANIES, AND THEY
10:34AM 2 WERE GOING TO HAVE A SECOND SOURCE OF REVENUE, NOT ONLY THE
10:34AM 3 TESTING ITSELF, BUT THE DATA THAT THEY WERE CAPTURING, THEY
10:34AM 4 WOULD BE ABLE TO SELL THAT AND THAT WOULD POTENTIALLY BE
10:34AM 5 ANOTHER EQUAL SOURCE OF REVENUE.

10:34AM 6 Q. AND I THINK I FORGOT TO ASK YOU, WHEN YOU DID INVEST IN
10:34AM 7 2006, WHAT WAS THE APPROXIMATE AMOUNT OF THAT INVESTMENT?

10:34AM 8 A. ABOUT \$1,200,000.

10:35AM 9 Q. IN THE TIME PERIOD WE'RE TALKING ABOUT FOLLOWING THAT
10:35AM 10 FIRST INVESTMENT, APPROXIMATELY HOW FREQUENTLY DID YOU HAVE
10:35AM 11 CALLS WITH MS. HOLMES?

10:35AM 12 A. I'M SORRY, IN WHICH TIME PERIOD?

10:35AM 13 Q. SO FOLLOWING YOUR 2006 INVESTMENT. SO LET'S TALK ABOUT
10:35AM 14 2006 THROUGH 2010.

10:35AM 15 A. WE WOULD HAVE QUARTERLY UPDATE CALLS, FOR THE FIRST TWO OR
10:35AM 16 THREE YEARS, EVERY QUARTER. AND OCCASIONALLY WE WOULD REACH
10:35AM 17 OUT TO HER AND GET AN UPDATE ON SOMETHING THAT CAME TO OUR
10:35AM 18 ATTENTION.

10:35AM 19 AND THEN THERE WAS ALSO ONE PERSONAL VISIT A COUPLE OF
10:35AM 20 YEARS AFTER WE INVESTED. WE WERE IN CALIFORNIA FOR MY HIGH
10:35AM 21 SCHOOL SON'S SPRING BREAK TRIP AND WE PAID A VISIT TO HER AND
10:35AM 22 HER HEADQUARTERS.

10:35AM 23 Q. AND APPROXIMATELY WHAT YEAR WOULD THAT HAVE BEEN?

10:35AM 24 A. 2008, 2009.

10:35AM 25 Q. DURING THOSE DISCUSSIONS, WHAT DO YOU REMEMBER MS. HOLMES

10:36AM 1 TELLING YOU ABOUT PRODUCT DEVELOPMENT AND THE STATE OF THE
10:36AM 2 COMPANY'S ANALYZER DEVICE?

10:36AM 3 A. WE WERE ALWAYS LEFT WITH THE IMPRESSION THAT THE
10:36AM 4 TECHNOLOGY WORKED; THAT IT HAD MARKET ACCEPTANCE,
10:36AM 5 PHARMACEUTICAL COMPANIES WERE USING THIS TECHNOLOGY.

10:36AM 6 SO WE WERE ALWAYS LEFT WITH THE IMPRESSION THAT THIS WAS A
10:36AM 7 TECHNOLOGY THAT WAS WORKING.

10:36AM 8 Q. AND WHEN YOU VISITED THERANOS HEADQUARTERS DURING THE
10:36AM 9 SPRING BREAK TRIP, DO YOU RECALL THAT VISIT GENERALLY?

10:36AM 10 A. YES.

10:36AM 11 Q. WHAT DO YOU REMEMBER SEEING WITHIN THE COMPANY AT THAT
10:36AM 12 TIME?

10:36AM 13 A. I REMEMBER SEEING THE READERS THAT THEY WOULD PUT THE
10:36AM 14 BLOOD SAMPLES IN, AND I REMEMBER SEEING THE MACHINES THAT THE
10:36AM 15 READERS WOULD GO IN THAT WOULD READ THE BLOOD SAMPLES.

10:36AM 16 Q. AND CAN YOU DESCRIBE THE APPEARANCE OF WHAT YOU SAW. HOW
10:36AM 17 BIG WAS IT? WHAT DID IT LOOK LIKE?

10:36AM 18 A. MY RECOLLECTION, IF I CAN USE MY HANDS, WERE THE READERS
10:36AM 19 WERE SO BIG, AND IT HAD SPOTS TO, YOU KNOW, PUT THE BLOOD IN,
10:37AM 20 AND MY RECOLLECTION THAT THE MACHINE THAT READ THE READERS WERE
10:37AM 21 THE SIZE OF COMPUTERS AT THAT TIME (INDICATING).

10:37AM 22 Q. OKAY. SO JUST FOR THE RECORD, I THINK THE DEVICE THAT THE
10:37AM 23 BLOOD WENT IN YOU DESCRIBED AS BEING MAYBE FOUR INCHES OR SO;
10:37AM 24 IS THAT CORRECT?

10:37AM 25 A. THE SAMPLE WENT INTO SOMETHING THAT WAS MAYBE

10:37AM 1 THREE-QUARTERS OF AN INCH TO AN INCH BY THREE OR FOUR INCHES
10:37AM 2 AND THIN.

10:37AM 3 Q. AND THIN YOU SAID?

10:37AM 4 A. AND THIN.

10:37AM 5 Q. AND THE ANALYZER DEVICE ITSELF WAS THE SIZE OF A COMPUTER.
10:37AM 6 CAN YOU ESTIMATE THE DIMENSIONS FOR US, PLEASE?

10:37AM 7 A. MAYBE TWO, TWO AND A HALF FEET BY TWO, TWO AND A HALF
10:37AM 8 FEET.

10:37AM 9 Q. AND WHAT DID MS. HOLMES TELL YOU ABOUT WHO HAD DEVELOPED
10:37AM 10 AND MANUFACTURED THAT ANALYZER THAT YOU WERE LOOKING AT?

10:37AM 11 A. I DON'T RECALL IF SHE SPECIFICALLY SAID WHO DEVELOPED IT,
10:38AM 12 BUT WE WERE UNDER THE IMPRESSION THAT THAT WAS PROPRIETARY
10:38AM 13 TECHNOLOGY, THAT IT WAS ALL DEVELOPED IN HOUSE.

10:38AM 14 Q. AT ANY TIME DURING THAT VISIT, DID MS. HOLMES SHOW YOU OR
10:38AM 15 MENTION A THIRD PARTY, NON-THERANOS BLOOD ANALYZER?

10:38AM 16 A. NO.

10:38AM 17 Q. DURING THOSE CONVERSATIONS IN 2006 THROUGH 2010 OR SO, DID
10:38AM 18 MS. HOLMES EVER MENTION TO YOU THE POSSIBILITY OF AN IPO AT THE
10:38AM 19 COMPANY?

10:38AM 20 A. YES.

10:38AM 21 Q. AND WHAT DID SHE --

10:38AM 22 A. I RECALL THAT.

10:38AM 23 Q. I'M SORRY. I DON'T MEAN TO TALK OVER YOU.

10:38AM 24 MS. WALSH: OBJECTION. RELEVANCE.

10:38AM 25 THE COURT: EXCUSE ME. EXCUSE ME.

10:38AM 1

THE WITNESS: OH.

10:38AM 2

MS. WALSH: OBJECTION. RELEVANCE.

10:38AM 3

MR. BOSTIC: SO THE DEFENSE HAS ASKED I THINK A

10:38AM 4

COUPLE OF WITNESSES NOW ABOUT STATEMENTS AND THEIR INTENTIONS

10:38AM 5

ABOUT BEING LONG-TERM PARTNERS.

10:38AM 6

I THINK THE DEFENDANT'S STATEMENTS ABOUT THE IPO

10:38AM 7

POSSIBILITY AND THE LIQUIDITY EVENT ARE RELEVANT.

10:39AM 8

THE COURT: ALL RIGHT. I'LL OVERRULE THE OBJECTION.

10:39AM 9

DID YOU UNDERSTAND THE QUESTION?

10:39AM 10

THE WITNESS: YES.

10:39AM 11

WE WERE TOLD BEFORE OUR FIRST INVESTMENT THAT AN IPO WAS A

10:39AM 12

REASONABLE ASSUMPTION A FEW YEARS DOWN THE ROAD, AND IN THE

10:39AM 13

EARLY YEARS, 2006, 2007, 2008, WE WERE TOLD THAT AN IPO WAS A

10:39AM 14

REASONABLE ASSUMPTION WITHIN A YEAR OR TWO.

10:39AM 15

AND WHEN THAT YEAR OR TWO PASSED, WE WERE TOLD THAT IT'S A

10:39AM 16

REASONABLE ASSUMPTION WITHIN A YEAR OR TWO.

10:39AM 17

AND IN MY NOTES THERE WAS, THERE WAS, THERE WAS ONE TIME

10:39AM 18

WHEN IT WAS SUPPOSED TO BE POTENTIALLY 2008 AND THEN 2009, AND

10:39AM 19

IN ONE CONVERSATION DEFINITELY BY 2011.

10:39AM 20

BY MR. BOSTIC:

10:39AM 21

Q. AND THESE WERE ALL STATEMENTS BY WHOM?

10:39AM 22

A. BY MS. HOLMES.

10:39AM 23

Q. AND WAS THE POSSIBILITY AND TIMING OF AN IPO SOMETHING

10:39AM 24

THAT MATTERED TO YOU AS AN INVESTOR?

10:39AM 25

A. YES.

10:39AM 1 Q. AND WHY IS THAT?

10:39AM 2 A. BECAUSE YOU -- AT SOME POINT YOU WANT TO HARVEST YOUR

10:40AM 3 INVESTMENTS, AND WITH AN IPO THAT MEANS THAT THERE'S A PUBLIC

10:40AM 4 MARKET AND YOU CAN MAKE A DECISION THERE THEN TO POSSIBLY SELL

10:40AM 5 SOME OR ALL OF THE INVESTMENT.

10:40AM 6 Q. GOING BACK TO THE STATE OF THE TECHNOLOGY OVER THOSE YEARS

10:40AM 7 AND WHAT MS. HOLMES SAID ON THAT.

10:40AM 8 DO YOU RECALL HER MENTIONING CARTRIDGES TO YOU AT ANY

10:40AM 9 POINT?

10:40AM 10 A. YES.

10:40AM 11 Q. AND WHAT WAS YOUR UNDERSTANDING OF WHAT A CARTRIDGE MEANT

10:40AM 12 IN CONNECTION WITH THERANOS?

10:40AM 13 A. A CARTRIDGE WAS THE DEVICE WHERE YOU WOULD PUT THE BLOOD

10:40AM 14 SAMPLE AND THEN YOU WOULD PUT THE CARTRIDGE IN THE READER.

10:40AM 15 Q. AND DURING THE YEARS WE'RE TALKING ABOUT, 2006 THROUGH

10:40AM 16 2010 OR SO, DID MS. HOLMES MAKE ANY STATEMENTS TO YOU ABOUT THE

10:40AM 17 NUMBERS OF CARTRIDGES THAT THERANOS WAS PRODUCING?

10:40AM 18 A. YES, SHE DID.

10:40AM 19 Q. WHAT DO YOU REMEMBER ABOUT THAT?

10:40AM 20 A. THEY WERE PRODUCING ABOUT 400,000 CARTRIDGES A MONTH,

10:40AM 21 BECAUSE THAT WAS THE -- THE DEMAND WAS A MILLION CARTRIDGES A

10:40AM 22 MONTH.

10:40AM 23 THEY WERE GEARING UP, BY THE END OF THE YEAR, TO PRODUCE A

10:41AM 24 MILLION CARTRIDGES A MONTH.

10:41AM 25 AND SHE TOLD ME THAT THEY EXPECTED THE DEMAND TO GROW TO

10:41AM 1 TWO MILLION CARTRIDGES A MONTH THE VERY NEXT YEAR.

10:41AM 2 EACH OF THOSE CARTRIDGES COULD DO I BELIEVE IT WAS FIVE
10:41AM 3 TESTS, AND EACH OF THOSE TESTS WOULD SELL FOR ABOUT \$30.

10:41AM 4 SO WHETHER YOU PUT A PEN TO INK AND DO THE CALCULATION,
10:41AM 5 THE CURRENT DEMAND AND THE DEMAND THAT SHE SAID WAS HAPPENING
10:41AM 6 THIS YEAR AND THE NEXT YEAR WAS POTENTIALLY TENS OR HUNDREDS OF
10:41AM 7 MILLIONS OF DOLLARS OF REVENUE.

10:41AM 8 Q. AND WHEN MS. HOLMES WAS TELLING YOU ABOUT THESE CARTRIDGE
10:41AM 9 NUMBERS, WERE THOSE STATEMENTS LIMITED TO PROJECTIONS ABOUT THE
10:41AM 10 FUTURE, OR DID THEY INCLUDE STATEMENTS ABOUT WHAT THE COMPANY
10:41AM 11 WAS DOING AT THAT MOMENT?

10:41AM 12 A. NO, THEY WERE BOTH CURRENT AND FUTURE. AND I BELIEVE I'VE
10:41AM 13 GOT ONE IN MY NOTES THAT IT WAS CURRENT PRODUCTION AND DEMAND
10:41AM 14 FOR 400,000 GROWING TO A MILLION. THE 400,000 WAS CURRENT.

10:41AM 15 Q. I'D LIKE TO SHIFT NOW TO THE TIME PERIOD OF 2010 AND THE
10:42AM 16 YEARS FOLLOWING THAT. OKAY?

10:42AM 17 IN EARLY 2010, DO YOU RECALL A CONVERSATION WITH
10:42AM 18 MS. HOLMES ABOUT WHETHER THE COMPANY WAS SCALING OR NOT?

10:42AM 19 A. I WOULD HAVE TO CHECK MY NOTES.

10:42AM 20 Q. OKAY. I'LL DIRECT YOUR ATTENTION TO THE NOTES IN FRONT OF
10:42AM 21 YOU. WOULD REVIEWING THOSE NOTES HELP REFRESH YOUR
10:42AM 22 RECOLLECTION?

10:42AM 23 A. YES.

10:42AM 24 Q. IN THE BINDER IN FRONT OF YOU, IF YOU'LL TURN TO TAB 14,
10:42AM 25 AND I'LL DIRECT YOUR ATTENTION TO PAGE 15. THEY'RE NUMBERED AT

10:42AM 1 THE BOTTOM.

10:42AM 2 WHEN YOU GET TO PAGE 15, TAKE A MOMENT TO REVIEW THAT PAGE

10:42AM 3 AND READ IT TO YOURSELF, PLEASE, AND THEN I'LL ASK YOU IF IT

10:42AM 4 REFRESHES YOUR MEMORY.

10:43AM 5 (PAUSE IN PROCEEDINGS.)

10:43AM 6 THE WITNESS: OKAY.

10:43AM 7 BY MR. BOSTIC:

10:43AM 8 Q. HAS REVIEWING THOSE NOTES REFRESHED YOUR MEMORY ABOUT A

10:43AM 9 CONVERSATION THAT YOU HAD WITH MS. HOLMES ABOUT SCALING?

10:43AM 10 A. YES.

10:43AM 11 Q. AND WHAT DO YOU REMEMBER MS. HOLMES TELLING YOU ABOUT

10:43AM 12 WHETHER THE COMPANY WAS SCALING IN 2010?

10:43AM 13 A. THAT THEY WERE HAVING CONVERSATIONS WITH RETAILERS; THAT

10:43AM 14 THERE WAS A POTENTIAL TO HAVE LABS, MINILABS, I DON'T KNOW WHAT

10:43AM 15 THEY CALLED THEM AT THE TIME, IN RETAILERS; THAT THE MARKET WAS

10:44AM 16 HUGE; THAT THEY HAD A BETTER PRODUCT THAN THE TWO LEADING

10:44AM 17 COMPANIES, QUEST AND LABCORP; THAT THEY WERE GOING TO GO AFTER

10:44AM 18 THE QUEST AND LABCORP BUSINESS.

10:44AM 19 THEY WERE ALSO HAVING CONVERSATIONS WITH DIFFERENT

10:44AM 20 GOVERNMENTS THAT WERE HAVING DIFFERENT ISSUES; THEY WERE HAVING

10:44AM 21 CONVERSATIONS WITH THE MEXICAN GOVERNMENT.

10:44AM 22 AND THERE WERE DIFFERENT TYPES OF DISEASES IN DIFFERENT

10:44AM 23 PARTS OF THE COUNTRY AND THEY WERE STARTING TO LOOK AT THE

10:44AM 24 EMERGING MARKETS, TAKING THEIR TECHNOLOGY TO SOLVE NEW AND

10:44AM 25 ADDITIONAL PROBLEMS WITH DIFFERENT KINDS OF DISEASES IN OTHER

10:44AM 1 PARTS OF THE WORLD.

10:44AM 2 Q. AND WAS THIS POSITIVE NEWS TO YOU AS AN INVESTOR IN THE
10:44AM 3 COMPANY?

10:44AM 4 A. YES, IT WAS.

10:44AM 5 Q. IN 2010, DID YOU CONTINUE TO DISCUSS WITH MS. HOLMES THE
10:44AM 6 POSSIBILITY OF AN IPO AT THERANOS?

10:44AM 7 A. YES, WE DISCUSSED THE POSSIBILITY OF AN IPO IN MOST
10:45AM 8 CONVERSATIONS AND EVERY YEAR.

10:45AM 9 Q. AND AT THAT TIME WAS MS. HOLMES STILL TELLING YOU THAT AN
10:45AM 10 IPO WAS STILL IN THERANOS'S FUTURE?

10:45AM 11 A. YES.

10:45AM 12 Q. IF I COULD ASK YOU TO TURN TO TAB 663 IN YOUR BINDER.

10:45AM 13 A. OKAY.

10:45AM 14 Q. IN 663, DO YOU SEE AN EMAIL CHAIN THAT INCLUDES MESSAGES
10:45AM 15 BETWEEN YOU AND MS. HOLMES?

10:45AM 16 A. YES.

10:45AM 17 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 663.

10:45AM 18 MS. WALSH: YOUR HONOR, OTHER THAN THE STANDING
10:45AM 19 OBJECTION REGARDING THE TIME PERIOD, NO OBJECTION BEYOND THAT.

10:45AM 20 THE COURT: ALL RIGHT. THANK YOU. THAT'S NOTED.

10:45AM 21 THIS IS ADMITTED, AND IT MAY BE PUBLISHED.

10:45AM 22 (GOVERNMENT'S EXHIBIT 663 WAS RECEIVED IN EVIDENCE.)

10:46AM 23 BY MR. BOSTIC:

10:46AM 24 Q. LET'S START ON PAGE 4 AT THE VERY BOTTOM.

10:46AM 25 DO YOU SEE -- MR. EISENMAN, WE'RE ABOUT TO SEE AN EMAIL

10:46AM 1 FROM YOU TO MS. HOLMES.

10:46AM 2 DO YOU SEE THAT?

10:46AM 3 A. YES.

10:46AM 4 Q. AND LET'S GO TO PAGE 5 AND ZOOM IN ON THE TOP HALF OF THE
10:46AM 5 PAGE OR SO.

10:46AM 6 DO YOU SEE THIS IS A MESSAGE FROM MAY 3RD, 2010?

10:46AM 7 A. YES.

10:46AM 8 Q. SO A FEW YEARS AFTER YOUR FIRST INVESTMENT IN THE COMPANY;
10:46AM 9 CORRECT?

10:46AM 10 A. CORRECT.

10:46AM 11 Q. YOU WRITE TO MS. HOLMES, "CAN WE SCHEDULE OUR QUARTERLY
10:46AM 12 UPDATE THE WEEK OF JUNE 1ST THROUGH JUNE 4TH?"

10:46AM 13 DO YOU SEE THAT?

10:46AM 14 A. YES.

10:46AM 15 Q. AND THEN YOU PROVIDE A NUMBERED LIST OF SOME QUESTIONS
10:46AM 16 THAT YOU HAVE TO MS. HOLMES ABOUT THERANOS; IS THAT RIGHT?

10:46AM 17 A. CORRECT.

10:46AM 18 Q. AND UNDER NUMBER 1 YOU WRITE, "YOU SAID THAT IN MARCH, YOU
10:46AM 19 WERE MANUFACTURING ABOUT 500,000 CARTRIDGES, AND SELLING ABOUT
10:46AM 20 400,000 AT ABOUT \$80 PER CARTRIDGE."

10:46AM 21 DO YOU REMEMBER MS. HOLMES MAKING THAT REPRESENTATION TO
10:46AM 22 YOU?

10:46AM 23 A. YES, I DO.

10:46AM 24 Q. YOU ASK, "CAN YOU SHARE THE SAME STATISTICS FOR APRIL, AND
10:47AM 25 AN ESTIMATE FOR MAY?"

10:47AM 1 DO YOU SEE THAT?

10:47AM 2 A. YES.

10:47AM 3 Q. WHY WERE YOU INTERESTED IN HAVING THAT INFORMATION?

10:47AM 4 A. BECAUSE SHE TOLD ME THAT THERE WAS A DEMAND FOR A MILLION

10:47AM 5 CARTRIDGES CURRENTLY AND THEY WERE SCALING UP TO PRODUCE A

10:47AM 6 MILLION CARTRIDGES BY THE END OF THE YEAR, AND IF THEY'RE

10:47AM 7 SELLING HUNDREDS OF THOUSANDS OF CARTRIDGES AT \$80 PER

10:47AM 8 CARTRIDGE, THAT'S A LOT OF REVENUE FOR THE COMPANY.

10:47AM 9 Q. UNDER ITEM 3 IN THE LIST, DO YOU SEE THAT THERE'S A

10:47AM 10 QUESTION ABOUT AN IPO AS WE'VE BEEN DISCUSSING?

10:47AM 11 A. YES.

10:47AM 12 Q. LET'S GO TO PAGE 4. SO MOVING FORWARD IN TIME.

10:47AM 13 THERE'S A MESSAGE IN THE MIDDLE OF THE PAGE FROM YOU DATED

10:47AM 14 MAY 10TH. IS THAT A WEEK AFTER YOUR FIRST EMAIL?

10:47AM 15 A. YES.

10:47AM 16 Q. AND YOU'RE ASKING FOR A RESPONSE; IS THAT RIGHT?

10:47AM 17 A. YES.

10:47AM 18 Q. LET'S GO TO PAGE 3 AND SEE MS. HOLMES'S RESPONSE.

10:48AM 19 A. OKAY.

10:48AM 20 Q. JUST GIVE US A SECOND FOR TECHNOLOGY TO CATCH UP.

10:48AM 21 OKAY. ON PAGE 3, LET'S ZOOM IN ON THE MIDDLE OF THE PAGE

10:48AM 22 TO MS. HOLMES'S RESPONSE.

10:48AM 23 DO YOU SEE SHE WRITES TO YOU NEAR THE TOP OF HER MESSAGE,

10:48AM 24 "JUNE IS A TOUGH MONTH FOR US AND I DON'T KNOW WHEN WE CAN DO

10:48AM 25 OUR NEXT CALL"?

10:48AM 1

A. YES.

10:48AM 2

Q. SHE THEN SAYS IN THE PARAGRAPH BELOW, "AS I DISCUSSED IN OUR CALL IN MARCH, WE CANNOT PROVIDE THE LEVEL OF COMMUNICATION YOU KEEP REQUESTING."

10:48AM 3

10:48AM 4

DO YOU SEE THAT?

10:48AM 5

10:48AM 6

A. YES.

10:48AM 7

Q. WHAT WAS HAPPENING AROUND THIS TIME WITH THE LEVEL OF COMMUNICATION AND INFORMATION THAT YOU WERE GETTING FROM THERANOS?

10:48AM 8

10:49AM 9

10:49AM 10

A. IT WAS DIMINISHING.

10:49AM 11

Q. AND WAS THAT A SUBJECT OF CONVERSATION BETWEEN YOU AND MS. HOLMES?

10:49AM 12

10:49AM 13

A. I'M SORRY. COULD YOU REPEAT THE QUESTION?

10:49AM 14

Q. WAS THE FACT THAT COMMUNICATION WAS DIMINISHING SOMETHING THAT YOU TALKED ABOUT WITH MS. HOLMES?

10:49AM 15

10:49AM 16

A. I CAN'T REALLY ANSWER THAT BECAUSE IT WAS SOMETHING THAT I WAS AWARE OF AND I WAS TRYING TO REMEDY, BUT THERE WAS -- THERE WAS LESS COMMUNICATION SO IT WAS -- IT WAS MORE ONE-SIDED THINKING THAT THIS IS -- THAT THE COMMUNICATION IS DIMINISHING.

10:49AM 17

10:49AM 18

10:49AM 19

I DON'T KNOW IF I'M ANSWERING THE QUESTION. YOU MAY WANT TO RE-ASK IT.

10:49AM 20

10:49AM 21

Q. UNDERSTOOD.

10:49AM 22

10:49AM 23

A. OKAY.

10:49AM 24

Q. GOING BACK TO MS. HOLMES'S EMAIL, DO YOU SEE THAT SHE SAYS, "WITH THE DEALS WE ARE FORMALIZING WITH RETAILERS, WE ARE

10:49AM 25

10:49AM 1 NOW OBLIGATED NOT TO DISCLOSE OUR PRODUCTION VOLUMES AND

10:50AM 2 CARTRIDGE SALE PRICES."

10:50AM 3 DO YOU SEE THAT?

10:50AM 4 A. YES.

10:50AM 5 Q. AT ANY POINT IN YOUR DEALINGS WITH THERANOS, DID YOU SIGN

10:50AM 6 A NONDISCLOSURE AGREEMENT SO THAT YOU COULD RECEIVE

10:50AM 7 CONFIDENTIAL INFORMATION FROM THE COMPANY?

10:50AM 8 A. NO.

10:50AM 9 Q. DID MS. HOLMES OR MR. BALWANI EVER ASK YOU TO SIGN A

10:50AM 10 NONDISCLOSURE AGREEMENT FOR THAT PURPOSE?

10:50AM 11 A. NO.

10:50AM 12 Q. WOULD YOU HAVE BEEN WILLING TO SIGN A NONDISCLOSURE

10:50AM 13 AGREEMENT IN ORDER TO GET MORE INFORMATION ABOUT THE COMPANY?

10:50AM 14 A. YES.

10:50AM 15 Q. DO YOU SEE THAT MS. HOLMES'S EMAIL ALSO SAYS, "AT THIS

10:50AM 16 POINT, WE ALSO DON'T HAVE ANY PLANS TO DO AN IPO ANY TIME

10:50AM 17 SOON"?

10:50AM 18 A. YES.

10:50AM 19 Q. WAS THAT DIFFERENT FROM WHAT SHE PREVIOUSLY TOLD YOU?

10:50AM 20 A. YES, 180 DEGREES.

10:50AM 21 Q. HOW SO?

10:50AM 22 AT THE BOTTOM OF THAT PAGE, SHE SAYS, "GIVEN YOUR

10:50AM 23 FRUSTRATION LEVEL AND OUR FRUSTRATION LEVEL WITH THIS

10:50AM 24 INTERACTION, I STRONGLY ENCOURAGE YOU TO RE-CONSIDER THE

10:50AM 25 OPPORTUNITY I PRESENTED ON OUR LAST CALL TO REALIZE THE RETURN

10:50AM 1 ON YOUR INVESTMENT."

10:50AM 2 WHAT IS THAT REFERRING TO?

10:50AM 3 A. WE WERE ON A CALL WHERE SHE SAID THAT THEY WERE TRYING TO

10:51AM 4 ARRANGE A FACILITY TO BUY OUR STOCK AT A LITTLE GREATER THAN

10:51AM 5 FIVE TIMES OUR ORIGINAL COST.

10:51AM 6 Q. AND AROUND THIS TIME PERIOD, DID YOU MAKE A DECISION ABOUT

10:51AM 7 WHETHER TO PURSUE THAT OPPORTUNITY OR NOT?

10:51AM 8 A. WE, WE DID PURSUE THAT OPPORTUNITY.

10:51AM 9 Q. DID YOU END UP SELLING YOUR SHARES AT THAT FIVE TIMES

10:51AM 10 RETURN?

10:51AM 11 A. NO. BECAUSE AS WE PURSUED THE OPPORTUNITY, THE COMPANY

10:51AM 12 WENT SILENT. THEY DID NOT FOLLOW THROUGH ON THEIR

10:51AM 13 COMMUNICATION.

10:51AM 14 Q. OKAY. LET'S GO TO PAGE 2 AND SEE YOUR RESPONSE TO

10:51AM 15 MS. HOLMES.

10:52AM 16 JUST GIVE US ONE MOMENT.

10:52AM 17 AND ON PAGE 2, LET'S ZOOM IN ON THE TOP HALF OF THE PAGE.

10:52AM 18 MR. EISENMAN, IS THIS YOUR RESPONSE TO MS. HOLMES?

10:52AM 19 A. YES, YES, IT IS.

10:52AM 20 Q. YOU WRITE THAT YOUR QUESTIONS WERE MERELY A FOLLOW-UP FROM

10:52AM 21 YOUR DECEMBER CALL.

10:52AM 22 DO YOU SEE THAT?

10:52AM 23 A. YES.

10:52AM 24 Q. AND YOU SAY THAT MS. HOLMES SAID THAT THERANOS WAS CLOSE

10:52AM 25 TO ACHIEVING \$200 MILLION IN SALES FOR 2009 IN THAT DECEMBER

10:52AM 1 CALL.

10:52AM 2 DO YOU REMEMBER HER SAYING THAT?

10:52AM 3 A. I DO.

10:52AM 4 Q. UNDER ITEM NUMBER 2, DO YOU SEE THAT YOU'RE ASKING FOR 20

10:52AM 5 TO 30 MINUTES FOR AN UPDATE CALL?

10:52AM 6 A. YES.

10:52AM 7 Q. AND GOING DOWN IN THAT SAME EMAIL, DO YOU SEE UNDER ITEM 3

10:53AM 8 AND 4, THERE'S DISCUSSION ABOUT THE MILLION CARTRIDGES PER

10:53AM 9 MONTH FIGURE THAT WE DISCUSSED PREVIOUSLY?

10:53AM 10 A. YES.

10:53AM 11 Q. AND YOU ALSO RELAY TO HER HER PREVIOUS STATEMENT THAT

10:53AM 12 THERE WAS A HIGH LIKELIHOOD OF AN IPO BY THE END OF 2010.

10:53AM 13 DO YOU SEE THAT?

10:53AM 14 A. YES.

10:53AM 15 Q. LET'S LOOK AT ITEM 6 HERE.

10:53AM 16 YOU SAY, "BOTTOM LINE -- IN OUR PRIOR CONVERSATIONS, YOU

10:53AM 17 SET CERTAIN EXPECTATIONS ABOUT AN INVESTORS MEETING, AN IPO,

10:53AM 18 AND SALES AND PRODUCTION FIGURES. I DON'T MIND IF THESE ITEMS

10:53AM 19 CHANGE, BUT I WOULD LIKE TO KNOW WHY THEY CHANGE."

10:53AM 20 DO YOU SEE THAT?

10:53AM 21 A. YES.

10:53AM 22 Q. AND DID THAT ACCURATELY REFLECT YOUR ATTITUDE AT THE TIME?

10:53AM 23 A. YES.

10:53AM 24 Q. AND WHY DID THESE THINGS MATTER TO YOU AS SOMEONE WHO HAD

10:53AM 25 MONEY INVESTED IN THE COMPANY?

10:53AM 1 A. BECAUSE THESE ARE METRICS THAT INCREASE VALUE, AND THESE
10:54AM 2 ARE ALL IMPORTANT METRICS.

10:54AM 3 SO IT'S A FINANCIAL -- IT'S OF IMPORTANCE FINANCIALLY.

10:54AM 4 IT'S ALSO IMPORTANT AS FAR AS CREDIBILITY, BECAUSE WHEN
10:54AM 5 SOMEONE COMMUNICATES INFORMATION AND THEY DON'T MEET A DEADLINE
10:54AM 6 AND THEY COMMUNICATE ADDITIONAL INFORMATION AND THEY DON'T MEET
10:54AM 7 A DEADLINE AND THIS BECOMES A PATTERN, THEN THERE'S A
10:54AM 8 CREDIBILITY ISSUE.

10:54AM 9 Q. SO YOU TESTIFIED THAT EVEN AFTER DISCUSSION OF A POTENTIAL
10:54AM 10 BUYOUT OF YOUR SHARES, YOU ENDED UP REMAINING AN INVESTOR IN
10:54AM 11 THERANOS; IS THAT RIGHT?

10:54AM 12 A. I HAD NO CHOICE. THERE WAS NO OPPORTUNITY TO SELL SHARES.

10:54AM 13 Q. AFTER THIS COMMUNICATION FROM MS. HOLMES ABOUT NOT BEING
10:54AM 14 ABLE TO GIVE YOU THE LEVEL OF COMMUNICATION THAT YOU WERE
10:54AM 15 REQUESTING, DID YOU CONTINUE TO HAVE SOME CALLS WITH HER?

10:54AM 16 A. YES, ATTEMPTED. ATTEMPTED CALLS.

10:55AM 17 Q. AND DID SOME OF THOSE CALLS ACTUALLY TAKE PLACE?

10:55AM 18 A. NO.

10:55AM 19 Q. DID YOU HAVE A CONVERSATION WITH MS. HOLMES IN DECEMBER OF
10:55AM 20 THE FOLLOWING YEAR, 2011?

10:55AM 21 A. I WOULD HAVE TO LOOK AT THE NOTES.

10:55AM 22 Q. DO YOU HAVE THE NOTES?

10:55AM 23 A. YES.

10:55AM 24 Q. WOULD LOOKING AT THE NOTES REFRESH YOUR RECOLLECTION?

10:55AM 25 A. YES.

10:55AM 1 Q. YES. LOOK AT IN TAB 14 OF THE BINDER, PAGE 28 NUMBER ON
10:55AM 2 THE BOTTOM.

10:55AM 3 ACTUALLY, PAGE 27 ACCORDING TO THE NUMBERS ON THE BOTTOM.
10:55AM 4 SORRY.

10:55AM 5 (PAUSE IN PROCEEDINGS.)

10:55AM 6 THE WITNESS: UM -- WELL, I'VE GOT ONE THAT SAYS
10:56AM 7 PAGE 28 AT THE TOP AND PAGE 27 AT THE BOTTOM. IS THAT THE ONE
10:56AM 8 YOU WANT ME TO LOOK AT?
10:56AM 9 BY MR. BOSTIC:

10:56AM 10 Q. THAT'S CORRECT.

10:56AM 11 A. OKAY.

10:56AM 12 Q. TAKE A MOMENT TO REVIEW THAT TO YOURSELF AND LET ME KNOW
10:56AM 13 IF THAT REFRESHES YOUR MEMORY.

10:56AM 14 A. OKAY. YES.

10:56AM 15 Q. DID YOU HAVE A CONVERSATION WITH MS. HOLMES AT THE END OF
10:56AM 16 2011?

10:56AM 17 A. YES.

10:56AM 18 Q. AND WHAT DID MS. HOLMES TELL YOU THEN ABOUT THE REVENUE OF
10:56AM 19 THERANOS, IF ANYTHING?

10:56AM 20 A. ANTICIPATED \$500 MILLION IN REVENUE NEXT YEAR.

10:56AM 21 Q. THAT \$500 MILLION REVENUE NUMBER IS SIGNIFICANTLY HIGHER
10:56AM 22 THAN THE \$200 MILLION REVENUE NUMBER THAT WE PREVIOUSLY
10:56AM 23 DISCUSSED.

10:56AM 24 A. YES.

10:56AM 25 Q. DO YOU KNOW WHETHER THERANOS EVER REACHED THAT

10:56AM 1 \$200 MILLION ANNUAL REVENUE NUMBER?

10:56AM 2 A. NOT TO MY KNOWLEDGE.

10:56AM 3 Q. FOLLOWING THAT CALL, WHAT HAPPENED GENERALLY WITH THE
10:56AM 4 FREQUENCY OF CONTACT WITH MS. HOLMES?

10:56AM 5 A. IT DROPPED OFF.

10:57AM 6 Q. DID YOU MAKE MORE ATTEMPTS TO GET INFORMATION FROM THE
10:57AM 7 COMPANY AND HER DURING THAT SILENT TIME PERIOD?

10:57AM 8 A. YES, I DID.

10:57AM 9 Q. AND, GENERALLY SPEAKING, HOW DID YOU GO ABOUT TRYING TO
10:57AM 10 GET MORE INFORMATION FROM THE COMPANY?

10:57AM 11 A. EMAILS TO ELIZABETH, I REACHED OUT TO DIRECTORS, CHAIRMAN
10:57AM 12 OF THE BOARD OF THE COMPANY, ATTEMPTED.

10:57AM 13 Q. AND WERE THOSE ATTEMPTS SUCCESSFUL IN GETTING SOME MORE
10:57AM 14 CONCRETE INFORMATION ABOUT WHAT THE COMPANY WAS DOING?

10:57AM 15 A. NO.

10:57AM 16 Q. DID THERE COME A TIME AFTER THIS WHEN YOU CONSIDERED A
10:57AM 17 SECOND INVESTMENT IN THERANOS?

10:57AM 18 A. YES.

10:57AM 19 Q. DID YOU END UP MAKING A SECOND INVESTMENT IN THE COMPANY?

10:57AM 20 A. YES.

10:57AM 21 Q. APPROXIMATELY WHEN DID THAT SECOND INVESTMENT HAPPEN?

10:57AM 22 A. THE END OF IT WAS EITHER 2013 OR 2015.

10:57AM 23 Q. OKAY. I CAN SHOW YOU SOME DOCUMENTS THAT MIGHT REFRESH
10:57AM 24 YOUR MEMORY ON THAT.

10:57AM 25 LET ME ASK YOU FIRST ABOUT SUNNY BALWANI.

10:58AM 1 DO YOU RECALL AT SOME POINT BEING INTRODUCED TO

10:58AM 2 MR. BALWANI?

10:58AM 3 A. UM, I'VE HAD A FEW PHONE CONVERSATIONS AND A FEW EMAIL

10:58AM 4 EXCHANGES.

10:58AM 5 Q. DO YOU RECALL WHEN THAT BEGAN? WHEN DID YOU FIRST BECOME

10:58AM 6 ACQUAINTED WITH MR. BALWANI IN CONNECTION WITH THERANOS?

10:58AM 7 A. I'D HAVE TO LOOK AT THE NOTES.

10:58AM 8 Q. LET ME DIRECT YOUR ATTENTION TO THE PAGE NUMBER 23 IN

10:58AM 9 TAB 14.

10:58AM 10 TAKE A MOMENT TO REVIEW PAGE 23 TO YOURSELF.

10:58AM 11 A. OKAY.

10:58AM 12 Q. DOES THAT REFRESH YOUR MEMORY ABOUT THE TIMING OF AT LEAST

10:58AM 13 ONE CONVERSATION YOU HAD WITH MR. BALWANI?

10:58AM 14 A. YES, I WROTE THE DATE DOWN.

10:58AM 15 Q. AND WHEN DO YOU REMEMBER SPEAKING TO MR. BALWANI IN

10:59AM 16 MID-2013?

10:59AM 17 A. THIS WAS DATED JUNE 17TH, SO THAT'S WHEN THE CONVERSATION

10:59AM 18 TOOK PLACE.

10:59AM 19 Q. AND DO YOU RECALL THAT CONVERSATION GENERALLY?

10:59AM 20 A. I DO.

10:59AM 21 Q. AND WHAT WAS THE PURPOSE OF SPEAKING WITH MR. BALWANI IN

10:59AM 22 JUNE OF 2013?

10:59AM 23 A. THE PURPOSE WAS TO DETERMINE WHERE THE COMPANY WAS, WHAT

10:59AM 24 KIND OF PROGRESS THAT THEY WERE MAKING.

10:59AM 25 Q. AND DO YOU REMEMBER WHETHER MR. BALWANI WAS SOMEONE THAT

10:59AM 1 MS. HOLMES PUT YOU IN TOUCH WITH?

10:59AM 2 A. I DON'T RECALL.

10:59AM 3 Q. DURING YOUR CONVERSATION WITH MR. BALWANI, DID HE TELL YOU
10:59AM 4 ANYTHING ABOUT THE STATE OF THE COMPANY'S BUSINESS AND THE
10:59AM 5 PRODUCT ROLLOUT?

10:59AM 6 A. YES, JUST READING FROM MY NOTES WHICH I --

10:59AM 7 MS. WALSH: OBJECTION, YOUR HONOR.

10:59AM 8 BY MR. BOSTIC:

10:59AM 9 Q. SO, MR. EISENMAN, WHAT I'LL ASK YOU TO DO IS REVIEW YOUR
10:59AM 10 NOTES TO YOURSELF, AND TELL ME IF THE NOTES REFRESH YOUR MEMORY
10:59AM 11 OF THAT CONVERSATION.

10:59AM 12 A. OKAY.

10:59AM 13 Q. AND THEN I'LL ASK YOU QUESTIONS ABOUT WHAT YOU REMEMBER
10:59AM 14 FROM THAT CONVERSATION.

10:59AM 15 A. OKAY. I REMEMBER THE CONVERSATION GENERALLY, AND THE
10:59AM 16 NOTES REFRESH MY MEMORY OF THE CONVERSATION.

10:59AM 17 Q. OKAY. SO TESTIFYING FROM YOUR MEMORY OF THAT
11:00AM 18 CONVERSATION, WHAT DO YOU REMEMBER MR. BALWANI SAYING TO YOU

11:00AM 19 ABOUT THE STATE OF THE COMPANY'S BUSINESS AND ITS PRODUCTS?

11:00AM 20 A. THAT THE COMPANY WAS GEARING UP; THAT THERE WAS MARKET
11:00AM 21 ACCEPTANCE; THAT THEY HAD A HEAD COUNT OF 340 PEOPLE; THEY WERE
11:00AM 22 TRYING TO HIRE 150 TO 200 PEOPLE; THERE WAS A PRODUCT ROLLOUT
11:00AM 23 THAT WAS GOING TO OCCUR WITHIN THE NEXT MONTH OR TWO.

11:00AM 24 Q. AND FROM YOUR CONVERSATION WITH MR. BALWANI, DID YOU HAVE
11:00AM 25 AN UNDERSTANDING ABOUT WHAT THAT PRODUCT ROLLOUT MEANT? WHAT

11:00AM 1 DID IT MEAN FOR THIS COMPANY TO ROLL OUT ITS PRODUCT?

11:00AM 2 A. IT MEANT THAT IT WAS GAINING WIDER MARKET ACCEPTANCE, AND
11:00AM 3 IT WAS, IT WAS KIND OF THE ROAD TO ADDITIONAL SUCCESS.

11:00AM 4 Q. OKAY. DURING THAT CONVERSATION, DID MR. BALWANI TELL YOU
11:00AM 5 ANYTHING ABOUT THE STATE OF THE COMPANY'S TECHNOLOGY?

11:00AM 6 A. NOT TO MY RECOLLECTION.

11:00AM 7 Q. DID MR. BALWANI TELL YOU, DURING THAT CONVERSATION, THAT
11:01AM 8 THE THERANOS EDISON ANALYZER ONLY HAD THE COMPONENTS TO DO ONE
11:01AM 9 CATEGORY OF BLOOD TESTS?

11:01AM 10 A. UM --

11:01AM 11 MS. WALSH: OBJECTION. HE SAID HE DIDN'T RECALL, HE
11:01AM 12 DIDN'T RECALL ANYTHING ABOUT THE TECHNOLOGY.

11:01AM 13 THE COURT: OVERRULED.

11:01AM 14 BY MR. BOSTIC:

11:01AM 15 Q. WOULD YOU LIKE THE QUESTION?

11:01AM 16 A. NO. IN THE CONVERSATION, THEY WERE WAITING FOR THEIR
11:01AM 17 PARTNER TO PULL THE TRIGGER ON THEIR AGREEMENT WITH THEM.

11:01AM 18 AND IT'S KIND OF ASSUMED THAT IF A PARTNER IS GOING TO GET
11:01AM 19 INVOLVED IN A PRODUCT ROLLOUT, THAT THERE IS MARKET ACCEPTANCE,
11:01AM 20 THAT IT'S A PRODUCT THAT IS A VALUABLE PRODUCT THAT WORKS.

11:01AM 21 Q. AND WHEN IT CAME TO THE ACTUAL TECHNOLOGICAL READINESS OF
11:01AM 22 THE THERANOS ANALYZER, DID MR. BALWANI TELL YOU ANYTHING ABOUT
11:01AM 23 THE LIMITATIONS OF WHAT THAT PRODUCT COULD DO OR HOW FAR ALONG
11:02AM 24 IT WAS IN DEVELOPMENT?

11:02AM 25 A. NO.

11:02AM 1 Q. OKAY. WOULD THOSE FACTORS HAVE MATTERED TO YOU IF THERE
11:02AM 2 HAD BEEN LIMITATIONS ABOUT WHAT THE PRODUCT COULD DO?

11:02AM 3 A. WELL, IT WOULD HAVE, IT WOULD HAVE WEIGHED ON -- IT WOULD
11:02AM 4 HAVE CONTRADICTED ANYTHING AND EVERYTHING THAT I LEARNED TO
11:02AM 5 THAT POINT.

11:02AM 6 TO THAT POINT THE PRODUCT WAS SUCCESSFUL, IT WORKED, IT
11:02AM 7 WAS BEING IMPROVED, AND ANYTHING TO THE CONTRARY WOULD HAVE
11:02AM 8 KIND OF NEGATED KIND OF THE NARRATIVE TO THAT POINT IN TIME.

11:02AM 9 Q. LATER IN 2013, AFTER YOUR CONVERSATION WITH MR. BALWANI,
11:02AM 10 DID YOU BEGIN TO SEE PUBLIC NEWS COVERAGE ABOUT THERANOS?

11:02AM 11 A. YES.

11:02AM 12 Q. AND DID THAT REPRESENT A CHANGE FROM HOW THINGS HAD BEEN
11:02AM 13 IN THE PAST?

11:02AM 14 A. WELL, IT WAS KIND OF A VALIDATION OF MARKET ACCEPTANCE.

11:02AM 15 THERE WERE REPORTS ABOUT THERANOS TECHNOLOGY IN CREDIBLE
11:03AM 16 FINANCIAL PUBLICATIONS.

11:03AM 17 AND IT WAS, IT WAS JUST ANOTHER, ANOTHER -- I GUESS
11:03AM 18 ANOTHER RATIFICATION OF A PRODUCT THAT WAS WORKING, EFFECTIVE,
11:03AM 19 THERE WAS A NEED.

11:03AM 20 Q. LET ME SHOW YOU AN EXAMPLE OF THE NEWS COVERAGE THAT WE'RE
11:03AM 21 TALKING ABOUT.

11:03AM 22 YOUR HONOR, EXHIBIT 1106 IS ALREADY ADMITTED.

11:03AM 23 MAY WE PUBLISH?

11:03AM 24 THE COURT: YES.

11:03AM 25 BY MR. BOSTIC:

11:03AM 1 Q. AND, MR. EISENMAN, DO YOU SEE ON YOUR SCREEN -- AND IT'S
11:03AM 2 ALSO AT TAB 1106 -- AN EMAIL -- I'M SORRY, AN ARTICLE IN "THE
11:03AM 3 WALL STREET JOURNAL" DATED SEPTEMBER 8TH, 2013 ENTITLED,
11:03AM 4 "ELIZABETH HOLMES: THE BREAKTHROUGH OF INSTANT DIAGNOSIS"?

11:03AM 5 A. I DO SEE THAT.

11:03AM 6 Q. DO YOU REMEMBER READING THIS ARTICLE IN "THE
11:03AM 7 WALL STREET JOURNAL" IN SEPTEMBER 2013?

11:03AM 8 A. YES, I DO RECALL READING THE ARTICLE.

11:03AM 9 Q. AND DO YOU REMEMBER WHAT YOUR REACTION WAS TO SEEING THIS
11:03AM 10 ARTICLE?

11:03AM 11 A. ELATION.

11:03AM 12 Q. EXPLAIN THAT. WHY WERE YOU ELATED TO SEE THIS ARTICLE
11:04AM 13 COME OUT?

11:04AM 14 A. BECAUSE IT RATIFIED TO WHAT WE HAD BEEN LED TO BELIEVE ALL
11:04AM 15 ALONG, THAT THIS WAS A SUCCESSFUL TECHNOLOGY THAT HAD WIDE
11:04AM 16 ACCEPTANCE, AND THE COMPANY HAD THE POTENTIAL TO BE HUGEY
11:04AM 17 PROFITABLE.

11:04AM 18 AND "THE WALL STREET JOURNAL" IS A VERY CREDIBLE SOURCE OF
11:04AM 19 INFORMATION, SO WHEN WE, WHEN WE READ THIS ARTICLE, IT WAS JUST
11:04AM 20 A VERY SIGNIFICANT STAMP OF APPROVAL.

11:04AM 21 Q. IF I COULD DRAW YOUR ATTENTION TO THE FIRST INDENTED
11:04AM 22 PARAGRAPH ON PAGE 1.

11:04AM 23 DO YOU SEE THERE THERE IS SOME LANGUAGE ABOUT "DEVICES
11:04AM 24 THAT AUTOMATE AND MINIATURIZE MORE THAN 1,000 LABORATORY
11:04AM 25 TESTS."

11:04AM 1 DO YOU SEE THAT?

11:04AM 2 A. YES.

11:04AM 3 Q. IS THAT CONSISTENT WITH THE DESCRIPTIONS OF THE TECHNOLOGY
11:04AM 4 THAT YOU HAD HEARD FROM MS. HOLMES AND MR. BALWANI PREVIOUSLY?

11:04AM 5 A. YES.

11:04AM 6 Q. AND DO YOU SEE THAT THERE'S A CLAIM, "THERANOS'S PROCESSES
11:04AM 7 ARE FASTER, CHEAPER, AND MORE ACCURATE THAN THE CONVENTIONAL
11:04AM 8 METHODS."

11:04AM 9 DO YOU SEE THAT?

11:05AM 10 A. YES.

11:05AM 11 Q. WAS THAT CONSISTENT WITH WHAT YOU HAD HEARD FROM HOLMES
11:05AM 12 AND BALWANI PREVIOUSLY?

11:05AM 13 A. YES, I HAD HEARD THE SAME CLAIMS.

11:05AM 14 MS. WALSH: OBJECTION.

11:05AM 15 THE COURT: PARDON ME, SIR. JUST A MOMENT.

11:05AM 16 THE WITNESS: OH, SORRY.

11:05AM 17 MS. WALSH: OBJECTION. FOUNDATION. THE WITNESS HAS
11:05AM 18 TESTIFIED THAT MR. BALWANI DIDN'T HAVE ANY CONVERSATIONS WITH
11:05AM 19 HIM ABOUT THE TECHNOLOGY.

11:05AM 20 THESE ARE FROM MS. HOLMES.

11:05AM 21 THE COURT: DO YOU WANT TO ASK YOUR QUESTION AGAIN
11:05AM 22 AS TO THIS?

11:05AM 23 BY MR. BOSTIC:

11:05AM 24 Q. SO, MR. EISENMAN, LET ME ASK, DURING YOUR CONVERSATION
11:05AM 25 WITH MR. BALWANI, DID HE DISCUSS WITH YOU A ROLLOUT OF A

11:05AM 1 COMPANY PRODUCT?

11:05AM 2 A. CAN I GO BACK TO THE OTHER TAB?

11:05AM 3 IT WAS IN THAT CONVERSATION THAT THERE WAS A PRODUCT
11:05AM 4 ROLLOUT WITHIN 30 TO 60 DAYS, THEY WERE WAITING FOR THEIR
11:05AM 5 PARTNER TO PULL THE TRIGGER.

11:05AM 6 ACTUALLY, I DON'T KNOW IF WE NEED TO GO BACK. I RECALL
11:05AM 7 THAT.

11:05AM 8 Q. LET ME ASK YOU THEN, WHEN MR. BALWANI WAS DISCUSSING THE
11:05AM 9 ROLLOUT OF THAT PRODUCT, DID HE SAY ANYTHING INCONSISTENT WITH
11:05AM 10 THE CLAIMS IN "THE WALL STREET JOURNAL" ARTICLE THAT YOU'RE
11:05AM 11 LOOKING AT?

11:05AM 12 A. NO.

11:05AM 13 Q. LET'S LOOK AT PAGE 2 OF THE ARTICLE.

11:06AM 14 ABOUT HALFWAY DOWN THE PAGE, THERE'S A PARAGRAPH THAT
11:06AM 15 BEGINS, "THERANOS'S TECHNOLOGY."

11:06AM 16 DO YOU SEE THAT?

11:06AM 17 A. YES.

11:06AM 18 Q. AND IT SAYS, "THERANOS'S TECHNOLOGY ELIMINATES MULTIPLE
11:06AM 19 LAB TRIPS BECAUSE IT CAN 'RUN ANY COMBINATION OF TESTS,
11:06AM 20 INCLUDING SETS OF FOLLOW-ON TESTS,' AT ONCE, VERY QUICKLY, ALL
11:06AM 21 FROM A SINGLE MICRO-SAMPLE."

11:06AM 22 DO YOU SEE THAT?

11:06AM 23 A. YES.

11:06AM 24 Q. WAS THIS FACT SOMETHING THAT WAS IMPORTANT TO YOU AS
11:06AM 25 SOMEONE WHO HAD INVESTED IN THE COMPANY?

11:06AM

1

A. YES.

11:06AM

2

Q. AND WHY WAS THAT?

11:06AM

3

A. BECAUSE THIS WAS A BETTER PRODUCT THAN THEIR TWO

11:06AM

4

COMPETITORS THAT THEY WERE TRYING TO CAPTURE THEIR MARKET,

11:06AM

5

LABCORP AND QUEST. AND LABCORP AND QUEST ARE BOTH

11:06AM

6

MULTI-BILLION DOLLAR COMPANIES, AND THIS IS BASICALLY DOING

11:06AM

7

WHAT THEY'RE DOING, BUT BETTER, CHEAPER, QUICKER, FASTER, MORE

11:07AM

8

ACCURATE.

11:07AM

9

Q. AND A LITTLE FURTHER DOWN THAT PAGE THERE'S A PARAGRAPH

11:07AM

10

THAT BEGINS, "ANOTHER THERANOS ADVANCE."

11:07AM

11

AND DO YOU SEE IT SAYS, "ANOTHER THERANOS ADVANCE IS ITS

11:07AM

12

TESTING'S ACCURACY"?

11:07AM

13

A. YES.

11:07AM

14

Q. AND WE SAW ON THE PREVIOUS PAGE SOME CLAIMS ABOUT ACCURACY

11:07AM

15

AS WELL.

11:07AM

16

DO YOU REMEMBER THAT?

11:07AM

17

A. YES.

11:07AM

18

Q. AS AN INVESTOR IN THE COMPANY, WERE THE ACCURACY OF THE

11:07AM

19

TESTS SOMETHING THAT MATTERED TO YOU?

11:07AM

20

A. OF UTMOST IMPORTANCE.

11:07AM

21

Q. WHY IS THAT?

11:07AM

22

A. BECAUSE YOU'RE DEALING WITH PEOPLE'S HEALTH, AND IF, IF

11:07AM

23

YOUR TESTS ARE NOT AS ACCURATE AS SCIENTIFICALLY POSSIBLE, THEN

11:07AM

24

YOU'RE COMPROMISING SOMEONE'S HEALTH.

11:07AM

25

Q. ALL RIGHT. THANK YOU.

11:07AM 1 LET ME ASK YOU TO TURN NEXT TO TAB 1334.

11:07AM 2 AND IN YOUR BINDER, ONCE YOU'RE THERE, DO YOU RECOGNIZE

11:07AM 3 THE DOCUMENT THAT IS AT TAB 1334?

11:08AM 4 A. YES.

11:08AM 5 Q. AND IS THAT AN EMAIL CHAIN BETWEEN YOU AND THERANOS

11:08AM 6 RELATING TO SHAREHOLDER CONSENTS?

11:08AM 7 A. YES.

11:08AM 8 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1334.

11:08AM 9 MS. WALSH: NO OBJECTION.

11:08AM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:08AM 11 (GOVERNMENT'S EXHIBIT 1334 WAS RECEIVED IN EVIDENCE.)

11:08AM 12 BY MR. BOSTIC:

11:08AM 13 Q. AND LET'S START AT THE BOTTOM OF PAGE 1.

11:08AM 14 DO YOU SEE, MR. EISENMAN, THIS IS AN EMAIL FROM THERANOS

11:08AM 15 TO YOU IN MID-DECEMBER 2013?

11:08AM 16 A. YES.

11:08AM 17 Q. AND IT INCLUDES A MEMO TO STOCKHOLDERS, IT SAYS, REGARDING

11:08AM 18 CERTAIN DEALS AND TRANSACTIONS.

11:08AM 19 DO YOU SEE THAT?

11:08AM 20 A. YES.

11:08AM 21 Q. AND IF WE TURN TO THE FOLLOWING PAGE, PAGE 2, DO YOU SEE

11:08AM 22 THAT THERE IS A MEMO SENT TO YOU AS A THERANOS STOCKHOLDER?

11:09AM 23 A. YES.

11:09AM 24 Q. OKAY. LET'S LOOK AT THE TOP PARAGRAPH THERE.

11:09AM 25 AND DO YOU SEE THERANOS TELLS YOU, "WITH OUR LAUNCH TO

11:09AM 1 CONSUMER HEALTH CARE THIS YEAR, WE ARE RAPIDLY SCALING TO
11:09AM 2 ESTABLISH A NATIONAL FOOTPRINT AND CAPTURE THE OPPORTUNITY WE
11:09AM 3 HAVE TO SERVE AS THE ONLY CERTIFIED, NATIONAL LABORATORY
11:09AM 4 CAPABLE OF RUNNING ANY OF ITS LABORATORY TESTS FROM A FEW TINY
11:09AM 5 DROPLETS OF BLOOD."

11:09AM 6 DO YOU SEE THAT?

11:09AM 7 A. YES.

11:09AM 8 Q. WAS THAT CONSISTENT WITH WHAT YOU HAD COME TO UNDERSTAND
11:09AM 9 OF THE CAPABILITIES OF THE THERANOS ANALYZER?

11:09AM 10 A. YES.

11:09AM 11 Q. AND AT THE BOTTOM OF THAT PARAGRAPH, DO YOU SEE THAT
11:09AM 12 THERE'S A CLAIM THAT, "WE ARE ACTIVELY INVESTING IN
11:09AM 13 INFRASTRUCTURE TO BUILD THIS NEW INDUSTRY WE HAVE CREATED"?

11:09AM 14 A. YES.

11:09AM 15 Q. WAS THIS GOOD NEWS TO YOU AS AN INVESTOR?

11:09AM 16 A. THIS WAS GREAT NEWS.

11:09AM 17 Q. THAT LANGUAGE AT THE TOP OF THE MEMO ABOUT RAPIDLY
11:10AM 18 SCALING, DID THAT SIGNAL ANYTHING TO YOU AS AN INVESTOR IN THE
11:10AM 19 COMPANY?

11:10AM 20 A. YES.

11:10AM 21 Q. AND WHAT DID THAT MEAN TO YOU?

11:10AM 22 A. IT MEANS THAT THE TECHNOLOGY WAS ACCEPTED IN THE
11:10AM 23 MARKETPLACE AND THEY WERE RAISING MONEY TO MEET THE POTENTIAL
11:10AM 24 INCREASED AND GROWING DEMAND.

11:10AM 25 Q. AND AS SOMEONE CONSIDERING WHETHER TO INVEST ADDITIONAL

11:10AM 1 MONEY IN THE COMPANY, HOW DID THAT FACT AFFECT YOUR VIEW OF THE
11:10AM 2 RISK INVOLVED?

11:10AM 3 A. THAT THIS WAS DERISKED. THE RISK HAD BEEN TAKEN OUT OF
11:10AM 4 THIS INVESTMENT.

11:10AM 5 Q. AND EXPLAIN WHY THAT IS THE CASE.

11:10AM 6 A. BECAUSE IT HAS ACCEPTANCE IN THE MARKETPLACE. IT'S
11:10AM 7 MEETING A HEALTH CARE PROBLEM. THEIR SOLUTION WAS BETTER THAN
11:10AM 8 CURRENT SOLUTIONS.

11:11AM 9 BASICALLY WE DON'T HAVE THE RISK OF AN EARLY STAGE COMPANY
11:11AM 10 THAT IS TRYING TO PROVE ITSELF. THIS INFERS THAT THE COMPANY
11:11AM 11 HAS ALREADY PROVEN ITSELF, AND IT'S AN OPPORTUNITY FOR THE
11:11AM 12 COMPANY TO NOW GROW ON THEIR PROVEN SUCCESS.

11:11AM 13 Q. LOOKING DOWN A LITTLE FURTHER ON THAT SAME PAGE, THERE'S A
11:11AM 14 PARAGRAPH THAT BEGINS, "IN LINE WITH PAST COMMUNICATIONS."

11:11AM 15 AND DO YOU SEE THERE THAT THERE'S A REFERENCE REFERRING
11:11AM 16 INVESTORS TO THERANOS'S WEBSITE AT WWW.THERANOS.COM?

11:11AM 17 A. YES.

11:11AM 18 Q. DID YOU VISIT THE THERANOS WEBSITE AROUND THIS TIME IN
11:11AM 19 LATE FEBRUARY 2013?

11:11AM 20 A. YES.

11:11AM 21 Q. AND WHAT WAS THE PURPOSE OF VISITING THE WEBSITE?

11:11AM 22 A. JUST TO GAIN ANY ADDITIONAL INSIGHTS OR INFORMATION THAT,
11:11AM 23 THAT I WASN'T GAINING ELSEWHERE.

11:12AM 24 AND, YOU KNOW, IT'S ALWAYS IMPORTANT TO SEE THE
11:12AM 25 INFORMATION THAT THE COMPANY PUTS OUT DIRECTLY VERSUS A THIRD

11:12AM 1 PARTY FINANCIAL PRESS THAT WRITES ABOUT THEM.

11:12AM 2 Q. AND DID YOU RELY ON THE INFORMATION YOU SAW ON THE WEBSITE

11:12AM 3 IN DECIDING WHETHER TO INVEST MORE MONEY IN THE COMPANY?

11:12AM 4 A. UM, GENERAL RECOLLECTION IS THAT I LOOKED AT THEIR WEBSITE

11:12AM 5 BEFORE AND AFTER THIS SECOND ROUND, AND IT WAS ONE OF MANY

11:12AM 6 FACTORS THAT I LOOKED TO TO MAKE AN ADDITIONAL INVESTMENT.

11:12AM 7 Q. AND SPECIFICALLY DID THE CONTENT OF THE WEBSITE MATTER TO

11:12AM 8 YOU AS SOMEONE CONSIDERING WHETHER TO INVEST MORE?

11:12AM 9 A. NO. IT WAS ONE OF MANY FACTORS THAT MATTERED TO ME.

11:12AM 10 Q. IF I COULD DRAW YOUR ATTENTION TO TAB 4060.

11:12AM 11 YOUR HONOR, I BELIEVE THIS IS ALREADY IN EVIDENCE.

11:12AM 12 MAY WE PUBLISH?

11:13AM 13 THE COURT: YES.

11:13AM 14 BY MR. BOSTIC:

11:13AM 15 Q. YOU MENTIONED MANY FACTORS THAT INFLUENCED YOUR DECISION

11:13AM 16 TO INVEST; IS THAT RIGHT, MR. EISENMAN?

11:13AM 17 A. YES.

11:13AM 18 Q. LOOKING AT EXHIBIT 4060, DO YOU SEE AT THE BOTTOM THAT

11:13AM 19 THERE'S AN EMAIL FROM SOMEONE NAMED PAT MENDENHALL?

11:13AM 20 A. YES.

11:13AM 21 Q. AND IT SAYS "I JUST SPENT 45 MINUTES SPEAKING WITH

11:13AM 22 SUNNY BALWANI, PRESIDENT AND COO OF THERANOS."

11:13AM 23 A. YES.

11:13AM 24 Q. AND WHO WAS PAT MENDENHALL TO YOU AT THIS TIME?

11:13AM 25 A. PAT MENDENHALL WAS A PARTNER OF THE FINANCIAL ADVISOR THAT

11:13AM 1 WAS MY FRIEND THAT WAS ELIZABETH'S FINANCIAL ADVISOR.

11:13AM 2 Q. AND WHAT WAS THE NAME OF THAT FINANCIAL ADVISOR, IF YOU
11:13AM 3 CAN REMIND US?

11:13AM 4 A. DAVID HARRIS.

11:13AM 5 Q. AND DO YOU SEE HERE THAT MR. MENDENHALL HAD EMAILED SOME
11:13AM 6 INFORMATION TO DAVID HARRIS ON DECEMBER 22ND, 2013?

11:13AM 7 A. YES.

11:13AM 8 Q. OKAY. AND LOOKING ABOVE THAT, DO YOU SEE THAT MR. HARRIS
11:14AM 9 THEN FORWARDED THAT INFORMATION TO YOU THAT SAME DAY,
11:14AM 10 DECEMBER 22ND?

11:14AM 11 A. YES.

11:14AM 12 Q. OKAY. LET'S LOOK AT THE INFORMATION THAT YOU GOT ON
11:14AM 13 DECEMBER 22ND.

11:14AM 14 LET'S TURN TO PAGE 2.

11:14AM 15 SO, MR. EISENMAN, LET ME ASK, FIRST OF ALL, WHEN YOU
11:14AM 16 RECEIVED THIS EMAIL ON DECEMBER 22ND, DO YOU REMEMBER REVIEWING
11:14AM 17 IT?

11:14AM 18 A. YES.

11:14AM 19 Q. AND FOR WHAT PURPOSE WERE YOU INTERESTED IN WHAT
11:14AM 20 MR. BALWANI HAD SAID ABOUT THERANOS?

11:14AM 21 A. WELL, THIS WAS A CONVERSATION THAT OCCURRED RIGHT BEFORE
11:14AM 22 WE MADE A DECISION TO INVEST IN THE FOLLOW-UP INVESTMENT ROUND
11:14AM 23 IN THERANOS.

11:14AM 24 Q. AND HOW DID THAT RELATE TO YOUR INTEREST IN STATEMENTS BY
11:14AM 25 MR. BALWANI?

11:14AM 1 A. IT WAS VERY IMPORTANT.

11:14AM 2 Q. AND WHY IS THAT?

11:14AM 3 A. BECAUSE IF, IF YOU'RE GOING TO INVEST MORE MONEY IN A

11:15AM 4 COMPANY, YOU WANT TO HAVE ALL OF THE INFORMATION THAT IS

11:15AM 5 AVAILABLE, AND THIS WAS CRITICAL AND IMPORTANT INFORMATION THAT

11:15AM 6 WAS MADE AVAILABLE RIGHT BEFORE WE, WE MADE THE FINAL DECISION

11:15AM 7 TO INVEST AGAIN.

11:15AM 8 Q. AND I'D LIKE TO ASK YOU ABOUT SOME OF THE SPECIFIC CLAIMS

11:15AM 9 THAT WERE RELAYED TO YOU FROM MR. BALWANI JUST BEFORE YOU MADE

11:15AM 10 THAT DECISION TO INVEST.

11:15AM 11 AND IF WE COULD START WITH ITEMS 3, 4, AND 5 ON THIS

11:15AM 12 NUMBERED LIST.

11:15AM 13 DO YOU SEE THOSE ITEMS?

11:15AM 14 A. YES.

11:15AM 15 Q. IT WAS RELAYED TO YOU THAT MR. BALWANI SAID THAT "THE

11:15AM 16 'SCIENCE' BEHIND THERANOS IS COMPLETE.

11:15AM 17 "NO NEW SCIENCE NEEDED.

11:15AM 18 "NO NEW INVENTION NEEDED."

11:15AM 19 DO YOU SEE THAT?

11:15AM 20 A. YES.

11:15AM 21 Q. AND WAS THAT AN IMPORTANT FACT FOR YOU IN DETERMINING

11:15AM 22 WHETHER TO INVEST MORE MONEY IN THE COMPANY?

11:15AM 23 A. YES, IT WAS.

11:15AM 24 Q. AND CAN YOU EXPLAIN WHY?

11:15AM 25 A. WE HAD BEEN LED TO BELIEVE THAT THE SCIENCE WAS PERFECTED

11:16AM 1 AT MANY POINTS BEFORE THIS, BUT THIS WAS ANOTHER STATEMENT --
11:16AM 2 AND LET ME GO BACK. A LOT OF OUR CONVERSATIONS AND
11:16AM 3 COMMUNICATION EARLY ON WERE WITH MS. HOLMES.

11:16AM 4 THIS WAS WITH ANOTHER TOP EXECUTIVE WITH THE COMPANY, AND
11:16AM 5 AGAIN, TIMING WISE, THIS WAS BEFORE WE DECIDED TO INVEST MORE
11:16AM 6 MONEY, AND THIS RATIFIED THAT THERE IS NO, NO RISK IN THIS
11:16AM 7 COMPANY NOT BEING ABLE TO DO WHAT THE MARKET IS, IS
11:16AM 8 ANTICIPATING THEM DOING, THAT THE TECHNOLOGY WAS PROVEN.

11:16AM 9 Q. LET'S LOOK AT ITEMS 6, 7, AND 8 IN THAT SAME LIST.

11:16AM 10 AND AGAIN, SO SOME ADDITIONAL INFORMATION THAT WAS RELAYED
11:16AM 11 TO YOU AS HAVING COME FROM MR. BALWANI; CORRECT?

11:16AM 12 A. YES.

11:16AM 13 Q. AND HERE WE SEE CLAIMS THAT THERANOS IS "COMPLETELY
11:17AM 14 VERTICALLY INTEGRATED -- THEY OWN THE LAB AND THE
11:17AM 15 MANUFACTURING."

11:17AM 16 DO YOU SEE THAT?

11:17AM 17 A. YES.

11:17AM 18 Q. IT SAYS, "100 PERCENT MANUFACTURING IN THE U.S.A.

11:17AM 19 "FULLY OWNED AND PROTECTED MANUFACTURING ASSURES PRICING
11:17AM 20 AND PROFIT STABILITY."

11:17AM 21 DO YOU SEE THAT?

11:17AM 22 A. YES.

11:17AM 23 Q. AND DURING ANY OF YOUR CONVERSATIONS WITH MS. HOLMES OR
11:17AM 24 MR. BALWANI BEFORE YOUR 2013 INVESTMENT, DID EITHER OF THEM
11:17AM 25 TELL YOU ABOUT THE COMPANY'S DEPENDENCE ON NON-THERANOS THIRD

11:17AM 1 PARTY ANALYZERS?

11:17AM 2 A. NO.

11:17AM 3 MS. WALSH: OBJECTION. LEADING.

11:17AM 4 THE COURT: OVERRULED. THE ANSWER WILL REMAIN.

11:17AM 5 BY MR. BOSTIC:

11:17AM 6 Q. MR. EISENMAN, YOUR ANSWER TO THAT QUESTION?

11:17AM 7 A. NO.

11:17AM 8 Q. WOULD A FACT LIKE THAT HAVE BEEN AN IMPORTANT THING FOR
11:17AM 9 YOU TO KNOW AS SOMEONE CONSIDERING AN INVESTMENT?

11:17AM 10 A. THE FACT THAT SOME OF THE MANUFACTURING IS DONE OUTSIDE
11:17AM 11 UNITED STATES.

11:17AM 12 Q. LET ME ASK, IF YOU HAD BEEN ASKED OR BEEN TOLD THAT THE
11:18AM 13 COMPANY WAS DEPENDENT OR RELIANT ON NON-THERANOS THIRD PARTY
11:18AM 14 ANALYZERS FOR MANY OF ITS TESTS, WOULD THAT HAVE BEEN A
11:18AM 15 RELEVANT FACT FOR YOU?

11:18AM 16 A. YES.

11:18AM 17 Q. AND WHY WAS THAT?

11:18AM 18 A. WE WERE UNDER THE UNDERSTANDING THAT IT WAS PROPRIETARY
11:18AM 19 TECHNOLOGY, THAT THEY HAD DEVELOPED THIS IN HOUSE, AND THIS IS
11:18AM 20 WHAT THEY WERE USING EXCLUSIVELY.

11:18AM 21 Q. CONTINUING IN THAT SAME THEME, LET'S LOOK AT ITEM 17 ON
11:18AM 22 THE LIST, AND DO YOU SEE THERE THAT THE CLAIM IS "THE
11:18AM 23 COMPETITION IS YEARS BEHIND TECHNOLOGY (MAYBE LONGER) ."

11:18AM 24 DO YOU SEE THAT?

11:18AM 25 A. YES.

11:18AM 1 Q. DID THAT MATTER TO YOU AS AN INVESTOR?

11:18AM 2 A. YES.

11:18AM 3 Q. AND LET'S LOOK UNDER FINANCIALS IN THIS LIST OF CLAIMS

11:18AM 4 THAT MR. BALWANI RELAYED TO YOU. AND UNDER FINANCIALS, DO YOU

11:18AM 5 SEE ITEM 1 SAYS, "THEY PREFER TO KEEP THE COMPETITION GUESSING

11:18AM 6 AS TO HOW MUCH MONEY THEY HAVE AND WHAT THEIR CURRENT REVENUE,

11:19AM 7 PROFIT MARGINS, REVENUES SOURCES, ET CETERA, ARE"?

11:19AM 8 A. YES.

11:19AM 9 Q. AND DO YOU SEE ITEMS 2 AND 3 SAY, "THEY CAN FUND GROWTH

11:19AM 10 THRU CURRENT OPERATIONS -- NO NEED FOR CAPITAL 3 -- THEY ARE

11:19AM 11 RAISING MONEY ONLY TO RAPIDLY ACCELERATE THE BUSINESS."

11:19AM 12 DO YOU SEE THAT?

11:19AM 13 A. YES.

11:19AM 14 Q. AND WAS THAT AN IMPORTANT THING FOR YOU TO KNOW AS AN

11:19AM 15 INVESTOR?

11:19AM 16 A. YES.

11:19AM 17 Q. AND WHAT DID THAT MEAN AS SOMEONE DECIDING TO INVEST MORE?

11:19AM 18 A. THAT MEANT THE TECHNOLOGY WORKED, THEY WERE SUCCESSFUL,

11:19AM 19 THEY WERE GAINING MARKET ACCEPTANCE, AND THIS CAPITAL RAISE WAS

11:19AM 20 TO HELP THEM GROW FASTER.

11:19AM 21 Q. AND FINALLY LET'S LOOK AT ITEM 13 UNDER FINANCIALS.

11:19AM 22 DO YOU SEE THERE'S A STATEMENT ATTRIBUTED TO MR. BALWANI,

11:19AM 23 THAT "THEY ARE AWARE THEY RAISED MONEY IN 2005 AND ARE

11:19AM 24 CONSCIOUS ABOUT NEEDING TO OFFER LIQUIDITY TO SHAREHOLDERS."

11:19AM 25 DO YOU SEE THAT?

11:19AM 1 A. YES.

11:19AM 2 Q. AND IT SAYS, "THIS CAN HAPPEN IN A TRADITIONAL WAY LIKE

11:20AM 3 IPO OR NONTRADITIONAL WAY LIKE FACEBOOK IN PRIVATE ROUND

11:20AM 4 TRANSACTIONS."

11:20AM 5 DO YOU SEE THAT?

11:20AM 6 A. YES.

11:20AM 7 Q. AND DID THAT SIGNAL TO YOU THAT AN IPO WAS STILL A

11:20AM 8 POSSIBILITY IN THE NEAR FUTURE?

11:20AM 9 A. YES.

11:20AM 10 Q. OKAY. WE CAN SET THAT ASIDE.

11:20AM 11 LET'S LOOK NEXT AT TAB 1371 IN YOUR BINDER.

11:20AM 12 THE COURT: WHILE WE'RE DOING THAT, WHY DON'T WE

11:20AM 13 STAND UP AND STRETCH FOR A MOMENT, LADIES AND GENTLEMEN.

11:20AM 14 1371, MR. BOSTIC?

11:20AM 15 MR. BOSTIC: 1371.

11:21AM 16 (STRETCHING.)

11:21AM 17 BY MR. BOSTIC:

11:21AM 18 Q. MR. EISENMAN, DO YOU HAVE 1371 IN FRONT OF YOU?

11:21AM 19 A. YES.

11:21AM 20 Q. IS THIS AN EMAIL CHAIN BETWEEN YOU AND MR. BALWANI

11:21AM 21 RELATING TO YOUR INVESTMENT IN 2013?

11:21AM 22 A. YES.

11:21AM 23 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS PAGES

11:21AM 24 1 THROUGH 8 OF 1371.

11:21AM 25 MS. WALSH: NO OBJECTION.

11:21AM 1 THE COURT: THEY'RE ADMITTED, AND THEY MAY BE
11:21AM 2 PUBLISHED.
11:21AM 3 (GOVERNMENT'S EXHIBIT 1371, PAGES 1-8, WAS RECEIVED IN
11:21AM 4 EVIDENCE.)
11:21AM 5 BY MR. BOSTIC:
11:21AM 6 Q. LET'S START ON PAGE 6.
11:21AM 7 AND DO YOU SEE ON PAGE 6, THIS BEGINS WITH THE EMAIL THAT
11:21AM 8 YOU GOT FROM THERANOS ATTACHING THAT MEMO TO STOCKHOLDERS?
11:21AM 9 A. YES.
11:21AM 10 Q. AND LET'S CONTINUE UP THAT CHAIN AND GO TO PAGE 3, AND ON
11:21AM 11 PAGE 3 AT THE BOTTOM, DO YOU SEE THAT YOU WRITE AN EMAIL TO
11:21AM 12 THERANOS ASKING FOR A CALL TO INQUIRE ABOUT HOW MUCH ADDITIONAL
11:21AM 13 INVESTMENT IS AVAILABLE AND WHAT THE TIMING IS FOR PAPERWORK.
11:22AM 14 DO YOU SEE THAT?
11:22AM 15 A. YES.
11:22AM 16 Q. AND IT SAYS, "WE MAY BE INTERESTED IN \$1 MILLION."
11:22AM 17 DO YOU SEE THAT?
11:22AM 18 A. YES.
11:22AM 19 Q. AND THE DATE OF THIS EMAIL WAS DECEMBER 23RD; IS THAT
11:22AM 20 RIGHT?
11:22AM 21 A. YES.
11:22AM 22 Q. WAS THAT THE DAY AFTER YOU RECEIVED THE REPORT ABOUT
11:22AM 23 MR. MENDENHALL'S CALL WITH SUNNY BALWANI?
11:22AM 24 A. YES.
11:22AM 25 Q. LET'S LOOK AT THE EMAIL ABOUT THAT. SO YOU EMAILED

11:22AM 1 THERANOS'S EMAIL ADDRESS; CORRECT?

11:22AM 2 A. YES.

11:22AM 3 Q. AND YOU GET A RESPONSE BACK FROM SUNNY BALWANI.

11:22AM 4 DO YOU SEE THAT?

11:22AM 5 A. YES.

11:22AM 6 Q. AND ON THAT SAME DAY HE WRITES YOU, "LET ME KNOW WHAT TIME
11:22AM 7 WOULD BE GOOD TO TALK AND I CAN CALL AND DISCUSS THIS."

11:22AM 8 DO YOU SEE THAT?

11:22AM 9 A. YES.

11:22AM 10 Q. AND AFTER SOME FOLLOW-UP COMMUNICATIONS ABOUT THE CALL AND
11:22AM 11 TIMING, DID YOU END UP SPEAKING TO MR. BALWANI ON THAT DATE?

11:22AM 12 A. YES.

11:22AM 13 Q. AND DO YOU REMEMBER ANYTHING SPECIFIC ABOUT WHAT YOU
11:23AM 14 LEARNED DURING THAT CALL?

11:23AM 15 A. DO YOU HAVE A NOTE THAT I CAN --

11:23AM 16 Q. NO. I'M JUST ASKING YOU IF YOU REMEMBER RECEIVING ANY
11:23AM 17 IMPORTANT FACTS ABOUT THE COMPANY DURING THAT PARTICULAR CALL
11:23AM 18 WITH THE COMPANY?

11:23AM 19 A. MY RECOLLECTION IS IT WAS A GENERAL CALL JUST RATIFYING
11:23AM 20 ALL OF THESE THINGS THAT I HAD LEARNED FROM PAT MENDENHALL AND
11:23AM 21 FROM THE EMAIL THAT I GOT FROM THE COMPANY GENERALLY; THAT THE
11:23AM 22 TECHNOLOGY WORKED; THAT THIS WAS FOR GROWTH CAPITAL.

11:23AM 23 AND THEN ONE OTHER FACTOR THAT I LEARNED IS THAT THIS IS
11:23AM 24 WHAT IS CALLED A FRIENDS AND FAMILY ROUND; THAT THESE WERE FOR
11:23AM 25 EXISTING SHAREHOLDERS; IT WAS A SMALL FINANCIAL RAISE AT THE

11:23AM 1 EQUIVALENT OF \$15 A SHARE. THEY WERE GOING TO CLOSE THIS OUT

11:23AM 2 AND RIGHT AFTER THE FIRST OF THE YEAR THERE WAS A MUCH LARGER

11:24AM 3 INSTITUTIONAL RAISE THAT PRESUMABLY WAS GOING TO BE AT A HIGHER

11:24AM 4 PLACE, IT WAS MENTIONED MAYBE \$17 PER SHARE, AND THE

11:24AM 5 INSTITUTIONAL ROUND WAS OVERSUBSCRIBED.

11:24AM 6 Q. AND DURING THAT CONVERSATION WITH MR. BALWANI, DID

11:24AM 7 ANYTHING THAT HE SAID CHANGE THE PREVIOUS UNDERSTANDING YOU HAD

11:24AM 8 HAD ABOUT THE COMPANY'S TECHNOLOGY, WHAT IT COULD DO OR THINGS

11:24AM 9 LIKE THAT?

11:24AM 10 A. NO.

11:24AM 11 Q. AFTER SPEAKING WITH MR. BALWANI, DID YOU DECIDE TO INVEST

11:24AM 12 MORE MONEY IN THERANOS?

11:24AM 13 A. YES.

11:24AM 14 Q. APPROXIMATELY HOW MUCH MORE DID YOU INVEST IN THE COMPANY

11:24AM 15 IN 2013?

11:24AM 16 A. \$100,000.

11:24AM 17 Q. IN CONNECTION WITH THAT INVESTMENT, DID YOU SIGN A STOCK

11:24AM 18 PURCHASE AGREEMENT?

11:24AM 19 A. YES.

11:24AM 20 Q. IF I COULD ASK YOU TO GO BACK TO 1334.

11:24AM 21 LET'S DISPLAY PAGE 59.

11:25AM 22 AND, MR. EISENMAN, IS THIS THE FIRST PAGE OF THE STOCK

11:25AM 23 PURCHASE AGREEMENT THAT YOU EXECUTED? IT'S ALSO ON THE SCREEN

11:25AM 24 IF THAT'S EASIER.

11:25AM 25 A. YES. YES.

11:25AM 1 Q. LET'S LOOK AT A FEW PROVISIONS HERE ON PAGE 65.

11:25AM 2 DO YOU SEE UNDER SECTION 4 HERE THERE'S A TITLE
11:25AM 3 REPRESENTATIONS AND WARRANTIES OF THE INVESTORS?

11:25AM 4 A. YES.

11:25AM 5 Q. UNDER 4.3 IT TALKS ABOUT INVESTMENT EXPERIENCE AND THE
11:25AM 6 INVESTOR HAVING SUBSTANTIAL EXPERIENCE IN EVALUATING AND
11:25AM 7 INVESTING IN PRIVATE PLACEMENT TRANSACTIONS OF SECURITIES AND
11:25AM 8 COMPANIES SIMILAR TO THE COMPANY.

11:25AM 9 DO YOU SEE THAT?

11:25AM 10 A. YES.

11:25AM 11 Q. AND LET'S GO TO THE NEXT PAGE, TO PAGE 4.6.

11:25AM 12 LET ME ASK YOU, WERE YOU AN EXPERIENCED INVESTOR AT THIS
11:25AM 13 TIME?

11:25AM 14 A. YES.

11:26AM 15 Q. UNDER 4.6, DO YOU SEE THERE'S A REPRESENTATION THAT THE
11:26AM 16 INVESTOR IS AN ACCREDITED INVESTOR UNDER A CERTAIN REGULATION?

11:26AM 17 A. YES.

11:26AM 18 Q. AND WAS THAT TRUE FOR YOU AT THE TIME?

11:26AM 19 A. YES.

11:26AM 20 Q. LET'S GO TO THE NEXT PAGE, 4.9.

11:26AM 21 DO YOU SEE THERE IT SAYS, "THE INVESTOR UNDERSTANDS AND
11:26AM 22 ACKNOWLEDGES THAT NO PUBLIC MARKET NOW EXISTS FOR ANY OF THE
11:26AM 23 SECURITIES ISSUED BY THE COMPANY"?

11:26AM 24 A. YES.

11:26AM 25 Q. AND DID YOU UNDERSTAND THAT AT THE TIME?

11:26AM 1 A. YES.

11:26AM 2 Q. LET'S GO BACK TO PAGE 65 AND LOOK AT SECTION 4.4 AT THE

11:26AM 3 BOTTOM.

11:26AM 4 AND THAT'S TITLED SPECULATIVE NATURE OF INVESTMENT.

11:26AM 5 DO YOU SEE THAT?

11:26AM 6 A. YES.

11:26AM 7 Q. AND HERE IT SAYS, "THE INVESTOR UNDERSTANDS AND

11:26AM 8 ACKNOWLEDGES THAT THE COMPANY HAS A LIMITED FINANCIAL AND

11:26AM 9 OPERATING HISTORY AND THAT AN INVESTMENT IN THE COMPANY IS

11:26AM 10 HIGHLY SPECULATIVE AND INVOLVES SUBSTANTIAL RISKS."

11:26AM 11 DO YOU SEE THAT?

11:26AM 12 A. YES.

11:26AM 13 Q. AND DID YOU AGREE WITH THAT LANGUAGE AT THE TIME?

11:27AM 14 A. NO.

11:27AM 15 Q. YOU ENTERED INTO THIS AGREEMENT; CORRECT?

11:27AM 16 A. YES.

11:27AM 17 Q. AND CAN YOU EXPLAIN WHAT YOU MEAN WHEN YOU SAY YOU DIDN'T

11:27AM 18 AGREE WITH THAT PARTICULAR LANGUAGE?

11:27AM 19 A. BECAUSE THE INFORMATION THAT I HAD AT THAT POINT IN TIME,

11:27AM 20 THIS WAS NOT A SPECULATIVE AND RISKY INVESTMENT. THE RISK HAD

11:27AM 21 BEEN TAKEN OUT.

11:27AM 22 Q. AND YOU SAY THE INFORMATION THAT YOU HAD AT THE TIME.

11:27AM 23 WHAT INFORMATION ARE YOU REFERRING TO?

11:27AM 24 A. THE EMAIL THAT I GOT FROM PAT MENDENHALL OF HIS

11:27AM 25 CONVERSATION WITH MR. BALWANI, THE INFORMATION THAT CAME

11:27AM 1 DIRECTLY FROM THE THERANOS WEBSITE, FINANCIAL PRESS, BUT
11:27AM 2 PRIMARILY THE COMMUNICATION DIRECTLY FROM THE COMPANY AND
11:27AM 3 MR. BALWANI WERE OF PRIMARY IMPORTANCE.

11:27AM 4 Q. LET'S LOOK AT 4.5, AND IT SAYS ACCESS TO DATA.

11:27AM 5 "SUCH AN INVESTOR HAS HAD AN OPPORTUNITY TO ASK QUESTIONS
11:28AM 6 OF, AND RECEIVE ANSWERS FROM, THE OFFICERS OF THE COMPANY
11:28AM 7 CONCERNING AGREEMENTS," AND OTHER ITEMS.

11:28AM 8 AND IT SAYS, "SUCH INVESTOR BELIEVES THAT IT HAS RECEIVED
11:28AM 9 ALL OF THE INFORMATION SUCH INVESTOR CONSIDERS NECESSARY OR
11:28AM 10 APPROPRIATE FOR DECIDING WHETHER TO PURCHASE THE SHARES."

11:28AM 11 DO YOU SEE THAT?

11:28AM 12 A. YES.

11:28AM 13 Q. DID YOU AGREE WITH THAT LANGUAGE AT THE TIME?

11:28AM 14 A. NO.

11:28AM 15 Q. WHY NOT?

11:28AM 16 A. BECAUSE I HAD ALSO REQUESTED FINANCIAL INFORMATION, AND
11:28AM 17 THE OTHER CIRCUMSTANCE WAS THAT I INVESTED IN OTHER COMPANIES
11:28AM 18 AT VARIOUS STAGES, THEY PROVIDE EITHER -- THEY PROVIDE HISTORIC
11:28AM 19 FINANCIAL DATA, AND SOMETIMES THEY HAVE WHAT IS CALLED A PRO
11:28AM 20 FORMA, SOME FUTURE LOOKING ESTIMATES OF WHAT THEY THINK IS
11:28AM 21 GOING TO HAPPEN IN THE NEXT YEAR OR TWO.

11:28AM 22 I HAD REQUESTED THAT INFORMATION, BUT I NEVER RECEIVED IT.

11:28AM 23 Q. OKAY. SO I WANT YOU TO THINK ABOUT YOUR DECISION TO
11:28AM 24 INVEST IN 2013.

11:28AM 25 SO FAR WE HAVE DISCUSSED ATTEMPTS THAT YOU HAVE MADE TO

11:29AM 1 GET MORE INFORMATION ABOUT THE COMPANY AND HOW THOSE ATTEMPTS
11:29AM 2 WERE UNSUCCESSFUL; IS THAT RIGHT?

11:29AM 3 A. YES.

11:29AM 4 Q. WE ALSO SAW SOME COMMUNICATION, AT LEAST WITH MS. HOLMES,
11:29AM 5 THAT INDICATED SOME TENSION IN THE RELATIONSHIP; IS THAT FAIR
11:29AM 6 TO SAY?

11:29AM 7 A. YES.

11:29AM 8 Q. GIVEN THOSE ISSUES, WHY DID YOU MAKE THE DECISION TO
11:29AM 9 INVEST MORE MONEY IN THE COMPANY IN 2013?

11:29AM 10 A. BECAUSE THIS WAS WHAT'S CALLED A SEAT AT THE TABLE. WHEN
11:29AM 11 YOU INVEST IN AN EARLY STAGE COMPANY, A LOT OF TIMES YOU'RE
11:29AM 12 GIVEN THE OPPORTUNITY TO INVEST IN LATER ROUNDS BEFORE THE
11:29AM 13 GENERAL PUBLIC OR BEFORE INSTITUTIONS, AS WAS THE CASE IN THIS
11:29AM 14 SITUATION.

11:29AM 15 WHEN WE HAD THE OPPORTUNITY TO INVEST IN THIS LATER ROUND,
11:29AM 16 WE WERE PRIVY TO A LOT MORE INFORMATION; WE WERE PRIVY TO
11:29AM 17 INFORMATION DIRECTLY FROM MR. BALWANI AND THE FINANCIAL PRESS
11:29AM 18 THAT THIS WAS TECHNOLOGY THAT WAS PROVEN, THAT WAS SUCCESSFUL,
11:30AM 19 THAT WAS WORKING; THERE WAS A LARGE MARKETPLACE THAT WAS
11:30AM 20 ALREADY ESTABLISHED BY THEIR COMPETITORS.

11:30AM 21 THEY HAD GIVEN US AN INDICATION THAT THIS WAS A BETTER
11:30AM 22 TECHNOLOGY FOR VARIOUS REASONS THAN THEIR COMPETITORS, AND THEY
11:30AM 23 WERE GOING TO CAPTURE A LOT OF THAT MULTI, MULTI BILLION DOLLAR
11:30AM 24 MARKET.

11:30AM 25 SO IN SPITE OF THE FACT THAT I DID NOT HAVE EVERY PIECE OF

11:30AM 1 INFORMATION THAT I REQUESTED, I.E., THE FINANCIAL INFORMATION,
11:30AM 2 I HAD ENOUGH INFORMATION TO ASSURE ME THAT THIS WAS A VERY,
11:30AM 3 VERY GOOD INVESTMENT IN TERMS OF RISK AND REWARD.

11:30AM 4 AND THE OTHER CARROT, EVEN THOUGH IT WAS A SMALLER CARROT
11:30AM 5 WAS THIS WAS A FAVOR TO EXISTING SHAREHOLDERS TO INVEST AT A
11:30AM 6 MORE FAVORABLE PRICE BECAUSE THERE WAS OVERSUBSCRIBED DEMAND TO
11:30AM 7 INSTANTLY CLOSE THIS ROUND, MARK THE PRICE UP, AND RAISE A LOT
11:30AM 8 MORE MONEY FROM INSTITUTIONS.

11:30AM 9 Q. LET ME ASK ABOUT THE TONE OF YOUR COMMUNICATIONS WITH
11:30AM 10 MR. BALWANI AROUND THE TIME OF YOUR INVESTMENT IN 2013.

11:31AM 11 AFTER YOU EMAILED AND INDICATED THAT YOU MIGHT BE
11:31AM 12 INTERESTED IN INVESTING ANOTHER MILLION DOLLARS, WHAT WAS THE
11:31AM 13 TONE OF YOUR CONVERSATION WITH MR. BALWANI LIKE?

11:31AM 14 A. VERY CORDIAL.

11:31AM 15 Q. YOU CAN PUT THAT EXHIBIT ASIDE, AND LET'S LOOK AT
11:31AM 16 EXHIBIT 2057 IN YOUR BINDER. LET ME KNOW WHEN YOU'RE THERE.

11:31AM 17 A. YES.

11:31AM 18 Q. AFTER YOU INVESTED MORE MONEY IN THERANOS, DID YOU
11:31AM 19 CONTINUE TO TRY TO GET MORE INFORMATION ABOUT THE COMPANY?

11:31AM 20 A. YES.

11:31AM 21 Q. AND HOW DID YOU GO ABOUT DOING THAT?

11:31AM 22 A. CALLS, EMAILS.

11:31AM 23 Q. AND WAS THE COMPANY -- LET ME ASK SPECIFICALLY. WERE
11:31AM 24 MS. HOLMES AND MR. BALWANI FORTHCOMING WITH YOU, FOLLOWING YOUR
11:31AM 25 INVESTMENT, ABOUT ADDITIONAL INFORMATION ABOUT THE COMPANY?

11:32AM 1 A. NO.

11:32AM 2 Q. DID YOU REVIEW PUBLICLY AVAILABLE INFORMATION ABOUT

11:32AM 3 THERANOS?

11:32AM 4 A. YES.

11:32AM 5 Q. AT 2057, DO YOU SEE AN EMAIL EXCHANGE BETWEEN YOU AND

11:32AM 6 MR. BALWANI RELATING TO SOME PUBLIC INFORMATION THAT YOU FOUND?

11:32AM 7 A. YES.

11:32AM 8 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2057.

11:32AM 9 MS. WALSH: NO OBJECTION.

11:32AM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:32AM 11 (GOVERNMENT'S EXHIBIT 2057 WAS RECEIVED IN EVIDENCE.)

11:32AM 12 BY MR. BOSTIC:

11:32AM 13 Q. LET'S START ON PAGE 1 -- ACTUALLY, JUST THE BOTTOM HALF.

11:32AM 14 DO YOU SEE, MR. EISENMAN, THAT THIS BEGINS WITH AN

11:32AM 15 OCTOBER 8TH, 2014 EMAIL FROM YOU TO MR. BALWANI AND

11:32AM 16 MS. HOLMES?

11:32AM 17 A. YES.

11:32AM 18 Q. AND THE SUBJECT IS NEGATIVE REPORT ON THERANOS FROM UBS.

11:32AM 19 DO YOU SEE THAT?

11:32AM 20 A. YES.

11:32AM 21 Q. AND WHAT WAS THIS ABOUT?

11:32AM 22 A. UBS IS A WALL STREET FIRM, A CREDIBLE FIRM, LARGE

11:33AM 23 WALL STREET FIRM, AND THEY PUT OUT A RESEARCH REPORT WITH --

11:33AM 24 CASTING DOUBT ON SOME OF THERANOS'S CLAIMS.

11:33AM 25 Q. LET'S LOOK AT THAT REPORT BRIEFLY ON PAGE 2 OF YOUR EMAIL.

11:33AM 1 AND AT THE TOP OF THE PAGE THERE, DO YOU SEE THAT THERE'S
11:33AM 2 A HEADING "THERANOS REMAINS A FOCUS FOR INVESTORS"?

11:33AM 3 A. YES.

11:33AM 4 Q. AND DO YOU SEE THAT IN THE MIDDLE OF THAT PARAGRAPH IT
11:33AM 5 SAYS, "THE MODEL, AS SEEN IN A HANDFUL OF WALGREENS LOCATIONS,
11:33AM 6 HAS EVOLVED INTO A TRADITIONAL REFERENCE LAB OFFERING WHERE
11:33AM 7 BLOOD IS DRAWN MOSTLY THROUGH VENIPUNCTURE AND SENT TO A
11:33AM 8 REGIONAL LAB LOCATION WITH A 24 PLUS HOUR TURN AROUND."

11:33AM 9 DO YOU SEE THAT?

11:33AM 10 A. YES.

11:33AM 11 Q. AND AT THE BOTTOM OF THE PARAGRAPH IT SAYS, "OUR
11:33AM 12 CONSULTANT BELIEVES IT IS HIGHLY UNLIKELY THAT ALL OF THESE
11:33AM 13 TESTS ARE BEING DONE ON ONE MACHINE."

11:33AM 14 DO YOU SEE THAT?

11:33AM 15 A. YES.

11:33AM 16 Q. WAS THAT INFORMATION CONCERNING TO YOU AT THE TIME?

11:34AM 17 A. TREMENDOUSLY.

11:34AM 18 Q. WHY?

11:34AM 19 A. BECAUSE WE WERE UNDER THE IMPRESSION THAT THE TECHNOLOGY
11:34AM 20 WORKED, IT WORKED ON SITE, IT WAS A SMALL BLOOD DRAW, IT WAS
11:34AM 21 ANALYZED WITHIN A PERIOD OF A FEW HOURS ON SITE, AND THIS
11:34AM 22 CONTRADICTED ALL OF THE COMPETITIVE ADVANTAGES THAT WE WERE LED
11:34AM 23 TO BELIEVE THAT THERANOS HAD.

11:34AM 24 Q. LET'S GO BACK TO PAGE 1 AND SEE YOUR EMAIL AND
11:34AM 25 MR. BALWANI'S RESPONSE.

11:34AM 1 ACTUALLY, JUST BELOW THAT.

11:34AM 2 SORRY, MS. WACHS. CAPTURING THE ORIGINAL EMAIL. THANK
11:34AM 3 YOU.

11:34AM 4 DO YOU SEE AT THE BOTTOM OF THAT SECTION YOU WRITE ABOUT
11:34AM 5 THE UBS REPORT, "THEY CLAIM THAT THE BLOOD SAMPLES HAVE TO BE
11:34AM 6 SENT TO PALO ALTO, THEY ARE LESS RELIABLE THAN TRADITIONAL
11:35AM 7 TESTS, AND THE TURN-AROUND TIME IS OVER 24 HOURS"?

11:35AM 8 A. YES.

11:35AM 9 Q. WERE YOU RAISING THESE CONCERNS ASKING FOR A RESPONSE FROM
11:35AM 10 MR. BALWANI AND MS. HOLMES?

11:35AM 11 A. YES.

11:35AM 12 Q. LET'S SEE MR. BALWANI'S RESPONSE JUST ABOVE THAT.

11:35AM 13 AND DO YOU SEE THAT HE WRITES BACK, "DOESN'T SURPRISE US.
11:35AM 14 SOUNDS LIKE AN UNINFORMED CONSULTANT."

11:35AM 15 DO YOU SEE THAT?

11:35AM 16 A. YES.

11:35AM 17 Q. AND WHAT DID THAT RESPONSE SIGNAL TO YOU?

11:35AM 18 A. IT SIGNALLED THEY WERE HEDGING BECAUSE HE DID NOT DENY
11:35AM 19 WHAT WE HAD BEEN LED TO BELIEVE.

11:35AM 20 Q. YOU RESPONDED TO THAT EMAIL FROM MR. BALWANI WRITING, "THE
11:35AM 21 BLOOD SAMPLES CAN BE ANALYZED ON SITE, AND DON'T HAVE TO BE
11:35AM 22 SENT TO A LAB, CORRECT?"

11:35AM 23 DO YOU SEE THAT?

11:35AM 24 A. YES.

11:35AM 25 Q. AND MR. BALWANI WRITES BACK, "WE HAVEN'T ANNOUNCED THESE

11:35AM 1 DETAILS ABOUT WHAT CAN BE DONE. THANKS."

11:35AM 2 DO YOU SEE THAT?

11:35AM 3 A. YES.

11:35AM 4 Q. AND THEN AT THE TOP YOU WRITE, "I THOUGHT ELIZABETH SAID
11:35AM 5 THE RESULTS WERE AVAILABLE IN 2-4 HOURS, WHICH IMPLIES THE
11:36AM 6 SAMPLES ARE TESTED LOCALLY."

11:36AM 7 YOU THEN SAY A COUPLE OF SENTENCES LATER, "IF THIS IS
11:36AM 8 PROPRIETARY INFO, I WILL STOP ASKING. I HAVE ALSO NOT RECEIVED
11:36AM 9 ANY INFORMATION ON HOW I CAN RECEIVE MY STOCK SPLIT SHARES."

11:36AM 10 DO YOU SEE THAT?

11:36AM 11 A. YES.

11:36AM 12 Q. DID MR. BALWANI OR MS. HOLMES EVER GET BACK TO YOU TO
11:36AM 13 EXPLAIN TO YOU HOW THERANOS WAS ACTUALLY OPERATING IN TERMS OF
11:36AM 14 WHAT YOU READ IN THE UBS REPORT?

11:36AM 15 A. NO.

11:36AM 16 Q. OKAY. WE CAN SET THAT ASIDE.

11:36AM 17 LET'S LOOK AT 2468 IN YOUR BINDER.

11:36AM 18 LET'S MOVE FORWARD INTO 2015. LET ME ASK YOU, DURING THAT
11:36AM 19 TIME PERIOD, DID YOU CONTINUE TO HAVE COMMUNICATIONS WITH
11:36AM 20 MR. BALWANI AND MS. HOLMES?

11:36AM 21 A. ATTEMPTED.

11:36AM 22 Q. AND WAS THE SUBJECT OF SOME OF THOSE ATTEMPTED
11:37AM 23 COMMUNICATIONS A POSSIBILITY OF GETTING RID OF YOUR SHARES IN
11:37AM 24 THERANOS?

11:37AM 25 A. YES.

11:37AM 1 Q. CAN YOU EXPLAIN HOW THAT CAME TO HAPPEN AND WHAT THE
11:37AM 2 CIRCUMSTANCES WERE?

11:37AM 3 A. I WAS ALWAYS LOOKING FOR LIQUIDITY EVENTS, WHETHER IT BE
11:37AM 4 BY IPO OR PRIVATE TRANSACTION OR A COMPANY BUYING BACK STOCK,
11:37AM 5 SO IT WAS JUST A CONSTANT ATTEMPT TO FIND OUT IF ANY OF THOSE
11:37AM 6 AVENUES WERE AVAILABLE.

11:37AM 7 Q. LOOKING AT TAB 2468, DO YOU SEE AN EMAIL EXCHANGE BETWEEN
11:37AM 8 YOU, MS. HOLMES, AND MR. BALWANI IN APRIL OF 2015 ON THAT
11:37AM 9 TOPIC?

11:37AM 10 A. YES.

11:37AM 11 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2468.

11:37AM 12 MS. WALSH: NO OBJECTION, YOUR HONOR, EXCEPT THAT
11:37AM 13 THERE IS A REDACTION THAT WE WOULD REQUEST ON PAGE 2. IT'S THE
11:38AM 14 REFERENCE IN THE FIRST SENTENCE OF -- AT THE TOP OF PAGE 2.

11:38AM 15 MR. BOSTIC: YOUR HONOR, I'M NOT SURE THAT THE
11:38AM 16 REDACTION IS NECESSARY, BUT WE'LL, WE'LL ABIDE BY THE COURT'S
11:38AM 17 ORDER.

11:38AM 18 MS. WALSH: JUST THE PERSONAL CIRCUMSTANCES.

11:38AM 19 THE COURT: YES. I SEE THAT.

11:38AM 20 CAN THAT BE REDACTED?

11:38AM 21 MR. BOSTIC: IT CAN BE, YOUR HONOR.

11:38AM 22 THE COURT: THIS IS FOLLOWING "RETIRING"?

11:38AM 23 MR. BOSTIC: THE REST OF THE SENTENCE FOLLOWING THE
11:38AM 24 WORD "RETIRING"?

11:38AM 25 THE COURT: JUST TO THE WORD "AND." I THINK THAT

11:38AM 1 CENTER PIECE THERE, IF YOU FOLLOW THAT.

11:38AM 2 MR. BOSTIC: JUST THE CLAUSE BETWEEN THE COMMAS?

11:38AM 3 THE COURT: CORRECT.

11:38AM 4 MR. BOSTIC: ONE MOMENT, YOUR HONOR, IF I COULD?

11:38AM 5 THE COURT: SURE.

11:38AM 6 MR. BOSTIC: YOUR HONOR, WITH THAT REDACTION, MAY WE

11:39AM 7 PUBLISH?

11:39AM 8 THE COURT: YES, SURE.

11:39AM 9 MR. BOSTIC: AND IS THIS EXHIBIT ADMITTED,

11:39AM 10 YOUR HONOR?

11:39AM 11 THE COURT: IT IS.

11:39AM 12 MR. BOSTIC: APOLOGIES.

11:39AM 13 (GOVERNMENT'S EXHIBIT 2468, REDACTED, WAS RECEIVED IN

11:39AM 14 EVIDENCE.)

11:39AM 15 BY MR. BOSTIC:

11:39AM 16 Q. LOOKING AT THIS CHAIN, MR. EISENMAN, DO YOU SEE THAT WE'RE

11:39AM 17 LOOKING AT THIS EMAIL BETWEEN YOU, MR. BALWANI, AND MS. HOLMES

11:39AM 18 IN MARCH OF 2015?

11:39AM 19 A. YES.

11:39AM 20 Q. AND LET'S LOOK AT PAGE 2, AND AT THE BOTTOM OF THE PAGE

11:39AM 21 YOU WRITE IN MARCH OF 2015 JUST TO MR. BALWANI.

11:39AM 22 DO YOU SEE THAT?

11:39AM 23 A. YES.

11:39AM 24 Q. AND YOU SAY, "SUNNY,

11:39AM 25 "WE HAVE BEEN INFORMED OF AN OPPORTUNITY TO SELL THERANOS

11:39AM 1 STOCK. BEFORE WE DO, WE WANTED TO GET SOME NARRATIVE FROM YOU,
11:39AM 2 TO GET A SENSE WHETHER OUR VALUE HAS GROWN IN THE YEAR AND
11:39AM 3 3 MONTHS SINCE THE ROUND VALUING THE COMPANY AT 9 BILLION WAS
11:39AM 4 PRICED."

11:39AM 5 DO YOU SEE THAT?

11:39AM 6 A. YES.

11:39AM 7 Q. WHY WERE YOU REACHING OUT TO MR. BALWANI TO GET THIS
11:39AM 8 INFORMATION?

11:39AM 9 A. BECAUSE MR. BALWANI WAS ONE OF THE KEY EXECUTIVES AT THE
11:39AM 10 COMPANY AND WOULD BE PRIVY TO THE TYPE OF INFORMATION AN
11:39AM 11 INVESTOR WOULD WANT TO HAVE BEFORE MAKING A DECISION TO SELL
11:40AM 12 STOCK.

11:40AM 13 Q. OKAY. LET'S LOOK AT MR. BALWANI'S RESPONSE TO YOUR
11:40AM 14 REQUEST.

11:40AM 15 AND JUST ABOVE THAT THERE'S AN EMAIL FROM HIM TO YOU.

11:40AM 16 HE SAYS, "THE LAST TRANSACTION WAS AT \$17 PER SHARE AS YOU
11:40AM 17 ALREADY KNOW.

11:40AM 18 "I DID NOT SAY WE WILL HAVE, OR CONSIDER A LIQUIDITY EVENT
11:40AM 19 IN 2015.

11:40AM 20 "WE DON'T KNOW ANYTHING OF THIS TRANSACTION BELOW."

11:40AM 21 DO YOU SEE THAT?

11:40AM 22 A. YES.

11:40AM 23 Q. IN THAT RESPONSE, DID HE PROVIDE YOU ANY OF THE
11:40AM 24 INFORMATION THAT YOU REQUESTED ABOUT WHERE THINGS STOOD WITH
11:40AM 25 THE COMPANY IN ITS VALUE?

11:40AM 1 A. NO.

11:40AM 2 Q. LET'S GO JUST ABOVE THAT TO THE TOP OF PAGE 2 AND SEE YOUR

11:40AM 3 MESSAGE.

11:40AM 4 IN RESPONSE, DO YOU SEE THAT YOU PROVIDE MR. BALWANI WHAT

11:40AM 5 YOU SAY ARE A FEW FACTS?

11:40AM 6 A. YES.

11:40AM 7 Q. AND YOU SAY WHEN YOU FIRST SPOKE TO ELIZABETH OVER NINE

11:41AM 8 YEARS AGO AND MADE YOUR INVESTMENT, SHE THOUGHT THE COMPANY

11:41AM 9 WOULD IPO IN THREE TO FIVE YEARS.

11:41AM 10 DO YOU REMEMBER SAYING THAT?

11:41AM 11 A. YES.

11:41AM 12 Q. AND UNDER ITEM 2 YOU WRITE, "WHEN I SPOKE TO YOU IN THE

11:41AM 13 LAST QUARTER OF 2014, YOU DID SAY THAT YOU UNDERSTOOD THAT SOME

11:41AM 14 INVESTORS WOULD LIKE AN EXIT AFTER 10 YEARS, AND THAT THERE MAY

11:41AM 15 BE A PRIVATE TRANSACTION TO FACILITATE THIS."

11:41AM 16 DO YOU REMEMBER MR. BALWANI SAYING THAT?

11:41AM 17 A. YES.

11:41AM 18 Q. LET'S GO TO PAGE 1.

11:41AM 19 AND DO YOU SEE AT THE BOTTOM OF PAGE 1 YOU'RE STILL TRYING

11:41AM 20 TO GET ANSWERS TO YOUR QUESTIONS?

11:41AM 21 A. YES.

11:41AM 22 Q. AND DO YOU SEE THAT MR. BALWANI WRITES BACK TO YOU IN THE

11:41AM 23 MIDDLE OF THE PAGE, "I ALREADY RESPONDED TO YOUR QUESTION ABOUT

11:41AM 24 YOU WANTING TO SELL YOUR SHARES TO SOMEONE WHO WANTS TO BUY

11:41AM 25 YOUR SHARES."

11:41AM 1 DO YOU SEE THAT?

11:41AM 2 A. YES.

11:41AM 3 Q. HAD YOU ACTUALLY GOTTEN A RESPONSE FROM MR. BALWANI
11:42AM 4 ANSWERING YOUR QUESTIONS?

11:42AM 5 A. NO.

11:42AM 6 Q. AROUND THIS TIME PERIOD, WERE MR. BALWANI AND MS. HOLMES
11:42AM 7 GIVING YOU ANY SUBSTANTIVE INFORMATION ABOUT THE COMPANY'S
11:42AM 8 ACTIVITIES OR ITS BUSINESS?

11:42AM 9 A. NO.

11:42AM 10 Q. GOING UP THE PAGE, LOOKING AT YOUR RESPONSE TO
11:42AM 11 MR. BALWANI, AND YOU INCLUDE MS. HOLMES AGAIN.

11:42AM 12 DO YOU SEE THAT?

11:42AM 13 A. YES.

11:42AM 14 Q. YOU SAY, "THE RESPONSE I AM LOOKING FOR FROM YOU OR
11:42AM 15 ELIZABETH IS A BUSINESS UPDATE LIKE YOU PROVIDED LAST YEAR WHEN
11:42AM 16 WE DISCUSSED THE COMPANY'S TIMETABLE FOR A PRIVATE OR PUBLIC
11:42AM 17 LIQUIDITY EVENT," AND OTHER ITEMS.

11:42AM 18 DO YOU SEE THAT?

11:42AM 19 A. YES.

11:42AM 20 Q. AND IN THE ABOVE PARAGRAPH YOU WRITE, "IT IS REALLY UNFAIR
11:42AM 21 FOR YOU TO PLAY THIS CAT AND MOUSE GAME WITH ME. I HAVE BEEN A
11:42AM 22 SHAREHOLDER FOR OVER 9 YEARS AND I, AS WELL AS MY DAUGHTER,
11:42AM 23 ALSO AS A SHAREHOLDER, ARE IN A DIFFERENT STAGE OF LIFE. I
11:42AM 24 CAN'T MAKE A RATIONALE DECISION TO SELL OR HOLD MY STOCK WITH
11:42AM 25 THE LACK OF INFORMATION YOU HAVE PROVIDED."

11:43AM 1 DOES THAT ACCURATELY REFLECT HOW YOU FELT AT THE TIME?

11:43AM 2 A. YES.

11:43AM 3 Q. AND YOU WRITE, "I AM REALLY HOPING FOR A MEANINGFUL
11:43AM 4 DIALOGUE ADDRESSING THE ISSUES ABOVE."

11:43AM 5 FOLLOWING THIS, DID YOU EVER GET A MEANINGFUL DIALOGUE
11:43AM 6 WITH MS. HOLMES OR MR. BALWANI ABOUT THE ACTIVITIES OF
11:43AM 7 THERANOS?

11:43AM 8 A. NO.

11:43AM 9 Q. LET'S LOOK AT MR. BALWANI'S RESPONSE TO YOU AT THE TOP OF
11:43AM 10 THE PAGE. DO YOU SEE HE WRITES, "ALAN.

11:43AM 11 "YOUR EMAILS ARE INSULTING, FULL OF INACCURATE STATEMENTS
11:43AM 12 AND WASTEFUL OF OUR TIME.

11:43AM 13 "OUR NEXT RESPONSE TO THIS EMAIL AND ALL OF YOUR FUTURE
11:43AM 14 EMAILS WILL COME FROM OUR COUNSEL."

11:43AM 15 DO YOU SEE THAT?

11:43AM 16 A. YES.

11:43AM 17 Q. DID YOU END UP SELLING YOUR THERANOS SHARES TO A THIRD
11:43AM 18 PART OR ANYONE ELSE?

11:43AM 19 A. NO.

11:43AM 20 Q. DID YOU EVER REALIZE ANY PROFIT ON YOUR PURCHASE OF EQUITY
11:43AM 21 IN THERANOS?

11:43AM 22 A. NO.

11:43AM 23 Q. AND WHAT IS YOUR UNDERSTANDING OF THE CURRENT VALUE OF
11:44AM 24 YOUR HOLDING IN THERANOS?

11:44AM 25 A. IT'S WORTHLESS.

11:44AM 1
11:44AM 2
11:44AM 3
11:44AM 4
11:44AM 5
11:44AM 6
11:44AM 7
11:44AM 8
11:44AM 9
11:44AM 10
11:44AM 11
11:44AM 12
11:44AM 13
11:44AM 14
11:44AM 15
11:44AM 16
11:44AM 17
11:44AM 18
11:44AM 19
11:44AM 20
21
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23
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25

MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?

THE COURT: YES.

(DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

BY MR. BOSTIC:

Q. MR. EISENMAN, MY LAST KIND OF CLEAN-UP QUESTION FOR YOU IS
THE TIMING OF YOUR INVESTMENT IN 2013. DO YOU REMEMBER WHEN
THAT TOOK PLACE, THE ACTUAL INVESTMENT?

A. IT WAS END OF DECEMBER.

Q. END OF DECEMBER 2013?

A. YES.

Q. THANK YOU.

NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: YOU WILL HAVE CROSS-EXAMINATION?

MS. WALSH: I WILL, YOUR HONOR.

THE COURT: SHOULD WE TAKE OUR BREAK NOW, LADIES AND
GENTLEMEN?

WHY DON'T WE DO THAT? LET'S TAKE ABOUT 30 MINUTES, AND
THEN WE'LL RESUME WITH CROSS-EXAMINATION.

THE WITNESS: OKAY. THANK YOU.

(RECESS FROM 11:44 A.M. UNTIL 12:46 P.M.)

AFTERNOON SESSION

(JURY IN AT 12:46 P.M.)

THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

OUR JURY IS BACK.

MR. EISENMAN IS ON THE STAND.

I APOLOGIZE FOR THE DELAY, LADIES AND GENTLEMEN.

MS. WALSH, YOU HAVE CROSS-EXAMINATION?

MS. WALSH: I DO, YOUR HONOR. THANK YOU.

MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: OH, YES. THANK YOU.

MS. WALSH: (HANDING.)

THE COURT: DO I GET ONE?

MS. WALSH: YES. IT'S RIGHT OVER HERE (INDICATING).

THE COURT: THANK YOU.

MS. WALSH: AND THE GOVERNMENT HAS ONE.

CROSS-EXAMINATION

BY MS. WALSH:

Q. GOOD AFTERNOON, MR. EISENMAN.

A. GOOD AFTERNOON.

Q. MY NAME IS AMY WALSH, AND I REPRESENT MR. BALWANI.

I'M GOING TO ASK YOU A FEW QUESTIONS ABOUT YOUR TESTIMONY
TODAY.

I'D LIKE TO START WITH YOUR BACKGROUND.

YOU HAVE A LAW DEGREE; CORRECT?

12:47PM 1 A. I DID.

12:47PM 2 Q. YOU DID?

12:47PM 3 A. I DID. I DON'T HAVE ANY ACTIVE LICENSES NOW. I RETIRED

12:47PM 4 ABOUT FIVE OR SIX YEARS AGO.

12:47PM 5 Q. OKAY. BUT AT SOME POINT YOU BRIEFLY PRACTICED LAW;

12:47PM 6 CORRECT?

12:47PM 7 A. CORRECT.

12:47PM 8 Q. AND THE TYPE OF LAW THAT YOU PRACTICED WAS TRUSTS AND

12:48PM 9 ESTATES; IS THAT RIGHT?

12:48PM 10 A. YES.

12:48PM 11 Q. YOU WERE ALSO LICENSED AS A CPA; CORRECT?

12:48PM 12 A. CORRECT.

12:48PM 13 Q. AND THAT'S A CERTIFIED PUBLIC ACCOUNTANT?

12:48PM 14 A. CORRECT.

12:48PM 15 Q. AND YOU, IN ADDITION TO BEING LICENSED, YOU WORKED AS AN

12:48PM 16 ACCOUNTANT; RIGHT?

12:48PM 17 A. YES.

12:48PM 18 Q. AND DURING YOUR WORK AS AN ACCOUNTANT, YOU FOCUSSED ON TAX

12:48PM 19 ISSUES; IS THAT CORRECT?

12:48PM 20 A. PRIMARILY DID TAX RETURNS.

12:48PM 21 Q. SO IS THE ANSWER YES TO MY QUESTION, YOU FOCUSSED ON TAX

12:48PM 22 ISSUES?

12:48PM 23 A. IT'S A LITTLE, IT'S A LITTLE NUANCED BECAUSE I WAS

12:48PM 24 PREPARING TAX RETURNS. I WASN'T REALLY RESEARCHING OR INVOLVED

12:48PM 25 IN TAX ISSUES.

12:48PM 1 Q. SO YOU WERE PREPARING TAX RETURNS; IS THAT RIGHT?

12:48PM 2 A. CORRECT.

12:48PM 3 Q. AND YOU WERE ALSO A CERTIFIED FINANCIAL PLANNER AT SOME

12:48PM 4 POINT IN TIME; CORRECT?

12:48PM 5 A. CORRECT.

12:48PM 6 Q. AND IN THAT WORK, YOU ADVISE PEOPLE ON HOW TO MANAGE THEIR

12:49PM 7 MONEY; IS THAT RIGHT?

12:49PM 8 A. THAT'S ONE OF THE AREAS. IT'S INSURANCE PLANNING,

12:49PM 9 RETIREMENT PLANNING, INVESTMENT PLANNING.

12:49PM 10 Q. SO YOU ADVISE PEOPLE ON HOW TO MANAGE THEIR MONEY; IS THAT

12:49PM 11 RIGHT?

12:49PM 12 A. YES.

12:49PM 13 Q. YOU WERE ALSO LICENSED TO TRADE SECURITIES; CORRECT?

12:49PM 14 A. CORRECT.

12:49PM 15 Q. AND YOU GOT YOUR LICENSE TO DO THAT IN AROUND 1980; IS

12:49PM 16 THAT RIGHT?

12:49PM 17 A. MY RECOLLECTION IS THAT IT WAS IN THE EARLY '80S.

12:49PM 18 I DON'T REMEMBER SPECIFICALLY.

12:49PM 19 Q. OKAY. AND ONCE YOU WERE LICENSED TO TRADE SECURITIES, YOU

12:49PM 20 ADVISED CLIENTS ON HOW THEY SHOULD INVEST THEIR MONEY; IS THAT

12:49PM 21 RIGHT?

12:49PM 22 A. CORRECT.

12:49PM 23 Q. YOU WERE A WEALTH MANAGER DURING THE COURSE OF YOUR

12:49PM 24 CAREER; IS THAT RIGHT?

12:49PM 25 A. YES.

12:49PM 1 Q. AND WHAT THAT MEANS IS THAT YOU ADVISE YOUR CLIENTS ON HOW
12:49PM 2 TO POSITION THEIR ASSETS; IS THAT RIGHT?

12:50PM 3 A. YES.

12:50PM 4 Q. AND HOW TO -- WITHDRAWN.
12:50PM 5 YOU ALSO ADVISE THEM ON DIFFERENT THINGS TO INVEST IN; IS
12:50PM 6 THAT RIGHT?

12:50PM 7 A. YES.

12:50PM 8 Q. AND YOU, THROUGH THE COURSE OF YOUR CAREER, YOU'VE HAD
12:50PM 9 EXTENSIVE EXPERIENCE IN INVESTING; IS THAT FAIR?

12:50PM 10 A. YES.

12:50PM 11 Q. YOU HAVE INVESTED IN PUBLIC COMPANIES; RIGHT?

12:50PM 12 A. YES.

12:50PM 13 Q. AND PRIVATE COMPANIES?

12:50PM 14 A. YES.

12:50PM 15 Q. AND IN START-UP COMPANIES; CORRECT?

12:50PM 16 A. YES.

12:50PM 17 Q. AND YOU'VE DONE THAT WORK FOR, BEFORE YOU RETIRED, FOR 30
12:50PM 18 OR 40 YEARS; RIGHT?

12:50PM 19 A. YES.

12:50PM 20 Q. NOW, YOU ALSO, YOU ALSO LOOK AT DEALS IN CONNECTION WITH
12:50PM 21 YOUR WIFE'S FAMILY OFFICE; IS THAT RIGHT?

12:50PM 22 A. UM, AGAIN, IT'S A LITTLE MORE NUANCED.
12:51PM 23 WE ALL INDEPENDENTLY LOOK FOR OPPORTUNITIES, AND WHEN WE
12:51PM 24 SEE OPPORTUNITIES THAT WE THINK ARE INTERESTING, WE SHARE.

12:51PM 25 Q. OKAY. SO YOU DISCUSS DEALS WITH PEOPLE WHO ARE INVOLVED

12:51PM 1 IN YOUR WIFE'S FAMILY OFFICE; IS THAT RIGHT?

12:51PM 2 A. YES.

12:51PM 3 Q. AND A FAMILY OFFICE IS A PRIVATE COMPANY; RIGHT?

12:51PM 4 A. IT'S NOT REALLY A COMPANY. IT'S JUST, IT'S JUST AN

12:51PM 5 ARRANGEMENT WHERE THEY SHARE OFFICE SPACE AND SHARE IDEAS.

12:51PM 6 Q. WELL, A FAMILY OFFICE IS AN ORGANIZATION, IS IT NOT?

12:51PM 7 A. I DON'T KNOW IF OUR PARTICULAR FAMILY OFFICE IS AN

12:51PM 8 ORGANIZATION.

12:51PM 9 Q. OKAY. WHETHER IT'S AN ORGANIZATION OR NOT, THE -- THERE

12:51PM 10 IS AN OFFICE; RIGHT?

12:51PM 11 A. YES.

12:51PM 12 Q. AND THE OFFICE EMPLOYS EMPLOYEES; RIGHT?

12:51PM 13 A. THERE IS ONE EMPLOYEE.

12:51PM 14 Q. THERE'S ONE EMPLOYEE. OKAY.

12:51PM 15 AND THE --

12:52PM 16 A. ACTUALLY, CORRECT.

12:52PM 17 THERE'S A RECEPTIONIST AND ONE EMPLOYEE.

12:52PM 18 Q. OKAY. AND THE PURPOSE OF THE FAMILY OFFICE IS TO INCREASE

12:52PM 19 THE WEALTH OF WHATEVER FAMILY IT PERTAINS TO; IS THAT FAIR?

12:52PM 20 A. INCREASE, AND ALSO JUST TO MANAGE WHAT ASSETS ARE UNDER

12:52PM 21 MANAGEMENT.

12:52PM 22 Q. OKAY. SO ONE OF THE PURPOSES IS TO INCREASE THE WEALTH OF

12:52PM 23 THE FAMILY; IS THAT RIGHT?

12:52PM 24 A. YES.

12:52PM 25 MR. BOSTIC: ASKED AND ANSWERED.

12:52PM 1 THE COURT: I'LL LET THE ANSWER REMAIN.

12:52PM 2 YOU CAN ASK ANOTHER QUESTION.

12:52PM 3 BY MS. WALSH:

12:52PM 4 Q. AND IS ANOTHER PURPOSE THAT YOU JUST MENTIONED TO MANAGE

12:52PM 5 THE INVESTMENTS OF THE FAMILY OFFICE?

12:52PM 6 A. YES.

12:52PM 7 Q. AND ANOTHER PURPOSE IS TO TRANSFER WHATEVER WEALTH IS

12:52PM 8 CREATED ACROSS GENERATIONS OF THE FAMILY; IS THAT RIGHT?

12:52PM 9 A. THAT CAN BE A PURPOSE.

12:52PM 10 Q. AND SO YOU AND YOUR WIFE -- THIS IS YOUR WIFE'S FAMILY

12:53PM 11 OFFICE; CORRECT?

12:53PM 12 A. YES.

12:53PM 13 Q. AND YOU AND YOUR WIFE AND HER SIBLINGS LOOK AT POTENTIAL

12:53PM 14 DEALS THAT COME ALONG; RIGHT?

12:53PM 15 A. YES.

12:53PM 16 Q. AND YOU DECIDE WHETHER TO INVEST IN THOSE DEALS; CORRECT?

12:53PM 17 A. YES.

12:53PM 18 Q. AND YOU MIGHT DECIDE TO INVEST TOGETHER; RIGHT?

12:53PM 19 A. RIGHT.

12:53PM 20 Q. OR SEPARATELY; CORRECT?

12:53PM 21 A. CORRECT.

12:53PM 22 Q. OR NOT AT ALL; RIGHT?

12:53PM 23 A. CORRECT.

12:53PM 24 Q. IS THAT --

12:53PM 25 A. CORRECT. CORRECT.

12:53PM 1 Q. OKAY. AND AT THE HEIGHT OF YOUR INVESTMENT CAREER, YOU
12:53PM 2 MANAGED ABOUT \$20 MILLION IN ASSETS; IS THAT CORRECT?

12:53PM 3 A. I DON'T RECALL, BUT THAT SOUNDS ABOUT CORRECT. THAT
12:53PM 4 SOUNDS ABOUT RIGHT.

12:53PM 5 Q. OKAY. SO TO THE BEST OF YOUR RECOLLECTION SITTING HERE
12:53PM 6 TODAY --

12:53PM 7 A. YES.

12:53PM 8 Q. -- THAT'S CORRECT; IS THAT RIGHT?

12:53PM 9 A. YES.

12:53PM 10 Q. AND YOU UNDERSTOOD THROUGHOUT YOUR CAREER THAT INVESTING
12:54PM 11 IN PRIVATE COMPANIES IS HIGHER RISK THAN INVESTING IN PUBLIC
12:54PM 12 COMPANIES; IS THAT RIGHT?

12:54PM 13 A. GENERALLY SPEAKING, THAT'S A FAIR STATEMENT.

12:54PM 14 Q. AND, IN FACT, YOU NEVER INVESTED YOUR CLIENTS' FUNDS IN
12:54PM 15 PRIVATE COMPANIES; IS THAT RIGHT?

12:54PM 16 A. THAT'S CORRECT.

12:54PM 17 Q. ONLY YOUR OWN MONEY; RIGHT?

12:54PM 18 A. YES.

12:54PM 19 Q. AND THAT'S BECAUSE IT'S HIGHER RISK; IS THAT RIGHT?

12:54PM 20 A. IT'S BECAUSE IT'S HIGHER RISK, AND THERE WOULD ALSO
12:54PM 21 POTENTIALLY BE COMPLIANCE ISSUES.

12:54PM 22 Q. SO ONE OF THE REASONS THAT YOU DIDN'T INVEST YOUR CLIENTS'
12:54PM 23 MONEY IN PRIVATE COMPANIES IS BECAUSE THEY'RE HIGHER RISK; IS
12:54PM 24 THAT RIGHT?

12:54PM 25 A. THAT IS ONE OF THE PRIMARY REASONS, CORRECT.

12:54PM 1 Q. NOW, YOU TESTIFIED DURING YOUR DIRECT TESTIMONY THAT YOU
12:54PM 2 LEARNED ABOUT THERANOS FROM DAVID HARRIS; IS THAT CORRECT?

12:54PM 3 A. YES.

12:54PM 4 Q. AND HE WAS A FRIEND OF YOURS; IS THAT RIGHT?

12:55PM 5 A. YES.

12:55PM 6 Q. AND HE WAS ALSO THE WEALTH MANAGER FOR ELIZABETH HOLMES'S
12:55PM 7 PARENTS; IS THAT CORRECT?

12:55PM 8 A. THAT'S CORRECT.

12:55PM 9 Q. AND HE TOLD YOU AT THE TIME THAT HE HAD INVESTED IN A
12:55PM 10 COMPANY IN CALIFORNIA NAMED THERANOS; RIGHT?

12:55PM 11 A. YES.

12:55PM 12 Q. AND HE TOLD YOU ABOUT THE FOUNDER OF THE COMPANY; RIGHT?

12:55PM 13 A. YES.

12:55PM 14 Q. THAT WAS MS. HOLMES; CORRECT?

12:55PM 15 A. CORRECT.

12:55PM 16 Q. AND HE TOLD YOU THAT SHE HAD INVENTED A NEW TECHNOLOGY;
12:55PM 17 RIGHT?

12:55PM 18 A. CORRECT.

12:55PM 19 Q. AND THAT TECHNOLOGY RELATED TO BLOOD TESTING; IS THAT
12:55PM 20 RIGHT?

12:55PM 21 A. YES.

12:55PM 22 Q. AND HE ALSO TOLD YOU, DID HE NOT, THAT MS. HOLMES ACTUALLY
12:55PM 23 HAD ROOTS IN HOUSTON; RIGHT?

12:55PM 24 A. YES.

12:55PM 25 Q. AND THAT'S WHERE YOU'RE FROM; CORRECT?

12:55PM 1 A. THAT'S WHERE I'VE BEEN LIVING SINCE 1977.

12:55PM 2 Q. OKAY. AND HE TOLD YOU THAT MS. HOLMES WENT TO HIGH SCHOOL

12:55PM 3 IN HOUSTON; RIGHT?

12:56PM 4 A. CORRECT.

12:56PM 5 Q. AND THEN SHE WENT ON TO ATTEND STANFORD UNIVERSITY; RIGHT?

12:56PM 6 A. YES.

12:56PM 7 Q. MR. HARRIS ALSO TOLD YOU THAT WHILE MS. HOLMES WAS AT

12:56PM 8 STANFORD, SHE HAD COME UP WITH AN IDEA FOR AN INVENTION AND SHE

12:56PM 9 APPLIED FOR A PATENT; IS THAT RIGHT?

12:56PM 10 A. YES.

12:56PM 11 Q. AND MR. HARRIS TOLD YOU AT THE TIME AS WELL THAT HE VIEWED

12:56PM 12 MS. HOLMES AS A GENIUS; IS THAT CORRECT?

12:56PM 13 A. YES.

12:56PM 14 Q. AND YOU BELIEVED HIM; RIGHT?

12:56PM 15 A. YES.

12:56PM 16 Q. AND HE SAID NOT ONLY IS SHE A GENIUS, BUT HE HIMSELF HAD A

12:56PM 17 LOT OF CONFIDENCE IN HER; IS THAT RIGHT?

12:56PM 18 A. YES.

12:56PM 19 Q. AND SO IS IT FAIR TO SAY THAT MR. HARRIS'S CONFIDENCE IN

12:56PM 20 MS. HOLMES WAS A MAJOR FACTOR FOR YOU WHEN YOU INVESTED BACK IN

12:56PM 21 2006?

12:56PM 22 A. IT WAS A FACTOR. I WOULDN'T SAY IT WAS A MAJOR FACTOR.

12:56PM 23 Q. OKAY. AND IT WAS MR. HARRIS'S CONTINUED CONFIDENCE IN

12:57PM 24 MS. HOLMES THAT WAS A FACTOR LEADING TO YOUR INVESTMENT IN

12:57PM 25 THERANOS IN 2013; IS THAT FAIR?

12:57PM 1 A. NO. I WOULD HAVE TO DISAGREE.

12:57PM 2 Q. OKAY. I'M GOING TO ASK YOU TO TURN TO AN EXHIBIT IN YOUR

12:57PM 3 BINDER. IT'S 20601. IT'S PROBABLY TOWARDS THE BACK.

12:57PM 4 A. OKAY.

12:58PM 5 Q. DO YOU SEE IT?

12:58PM 6 A. YES.

12:58PM 7 Q. OKAY. I'M GOING TO DIRECT YOUR ATTENTION TO THE MIDDLE

12:58PM 8 PARAGRAPH WHERE THERE'S A DATE AND THEN YOUR NAME, AND THEN

12:58PM 9 MOST, AND THE LAST SENTENCE OF THAT PARAGRAPH.

12:58PM 10 DO YOU SEE THAT?

12:58PM 11 A. YES.

12:58PM 12 Q. HAVE YOU READ IT?

12:58PM 13 A. ARE YOU TALKING ABOUT THIS SENTENCE THAT STARTS WITH

12:58PM 14 "MOST"?

12:58PM 15 Q. YES.

12:58PM 16 A. YES. BY THE WAY, WILL THIS BE ON THE SCREEN, TOO?

12:58PM 17 Q. NO.

12:58PM 18 A. NO? JUST TO --

12:58PM 19 Q. CAN YOU READ IT OKAY?

12:58PM 20 THE COURT: DO YOU WANT HIM TO READ IT TO HIMSELF?

12:58PM 21 BY MS. WALSH:

12:58PM 22 Q. JUST TO YOURSELF.

12:58PM 23 A. OKAY.

12:58PM 24 YES, I READ IT.

12:58PM 25 Q. OKAY. SO IT'S TRUE, IS IT NOT, THAT ONE FACTOR IN YOUR

12:58PM 1 INVESTMENT IN 2013 WAS MR. HARRIS'S CONTINUED CONFIDENCE IN

12:59PM 2 MS. HOLMES?

12:59PM 3 A. I WOULD SAY THAT'S FAIR TO SAY THAT THAT'S ONE FACTOR.

12:59PM 4 Q. ALL RIGHT. NOW TURNING BACK TO YOUR 2006 INVESTMENT.

12:59PM 5 YOU ALSO BECAME AWARE PRIOR TO THAT INVESTMENT THAT

12:59PM 6 LARRY ELLISON HAD A SIGNIFICANT STAKE IN THERANOS; IS THAT

12:59PM 7 RIGHT?

12:59PM 8 A. YES.

12:59PM 9 Q. AND YOU KNEW WHO LARRY ELLISON WAS; RIGHT?

12:59PM 10 A. YES.

12:59PM 11 Q. HE -- PARDON ME?

12:59PM 12 A. I SAID YES.

12:59PM 13 Q. HE WAS THE PERSON WHO BUILT ORACLE; CORRECT?

12:59PM 14 A. CORRECT.

12:59PM 15 Q. AND PRIOR TO YOUR 2006 INVESTMENT, YOU ALSO LEARNED THAT A

12:59PM 16 PERSON NAMED DON LUCAS WAS ON THERANOS'S BOARD OF DIRECTORS;

12:59PM 17 CORRECT?

12:59PM 18 A. CORRECT.

12:59PM 19 Q. AND YOU LEARNED THAT MR. LUCAS HAD A GOOD REPUTATION IN

12:59PM 20 SILICON VALLEY; CORRECT?

12:59PM 21 A. CORRECT.

12:59PM 22 Q. AND THAT REPUTATION WAS AS A SUCCESSFUL INVESTOR IN

12:59PM 23 START-UP COMPANIES; RIGHT?

12:59PM 24 A. I KNEW OF HIS INVOLVEMENT WITH ORACLE, BUT I DIDN'T KNOW

12:59PM 25 HIS OTHER HISTORY.

01:00PM 1 Q. OKAY. AND YOU ALSO KNEW THAT HE WAS CHAIRMAN OF THE BOARD
01:00PM 2 OF ORACLE; RIGHT?

01:00PM 3 A. YES.

01:00PM 4 Q. OKAY. AND THE PRESENCE OF MR. LUCAS ON THE BOARD AT
01:00PM 5 THERANOS AND MR. ELLISON'S STAKE IN THERANOS, THEY WERE ALSO
01:00PM 6 FACTORS IN YOUR DECISION TO INVEST IN THERANOS IN 2006; IS THAT
01:00PM 7 RIGHT?

01:00PM 8 A. YES.

01:00PM 9 Q. AND PRIOR TO YOUR INVESTMENT IN THERANOS IN 2006, THE ONLY
01:00PM 10 PERSON THAT YOU WERE INTERACTING WITH FROM THERANOS AT THE TIME
01:00PM 11 WAS ELIZABETH HOLMES; IS THAT RIGHT?

01:00PM 12 A. YES.

01:00PM 13 Q. YOU HAD NOT HEARD OF SUNNY BALWANI AT THAT POINT; CORRECT?

01:00PM 14 A. CORRECT.

01:00PM 15 Q. YOU DIDN'T EVEN KNOW WHEN HE STARTED AT THE COMPANY;
01:00PM 16 CORRECT?

01:00PM 17 A. CORRECT.

01:00PM 18 Q. YOU HAD NO COMMUNICATIONS WITH HIM AT THE TIME?

01:00PM 19 A. CORRECT.

01:00PM 20 Q. AND WHEN YOU MADE THE INVESTMENT IN 2006, YOU UNDERSTOOD
01:00PM 21 AT THE TIME THAT THERANOS WAS A PRIVATE COMPANY; CORRECT?

01:00PM 22 A. CORRECT.

01:00PM 23 Q. AND BECAUSE OF THAT, YOU UNDERSTOOD THAT THERE WAS NO
01:01PM 24 PUBLIC MARKET WHERE YOU COULD SELL YOUR SHARES OF THERANOS; IS
01:01PM 25 THAT RIGHT?

01:01PM 1 A. CORRECT.

01:01PM 2 Q. AND, IN FACT, THERANOS NEVER GUARANTEED THAT THERE WOULD

01:01PM 3 BE ANY PUBLIC MARKET WHERE YOU COULD SELL YOUR THERANOS SHARES;

01:01PM 4 CORRECT?

01:01PM 5 A. IT'S NOT SOMETHING THAT A PRIVATE COMPANY WOULD GUARANTEE

01:01PM 6 TO A SHAREHOLDER.

01:01PM 7 Q. SO THE ANSWER TO MY QUESTION IS YES, THERANOS NEVER

01:01PM 8 GUARANTEED THAT THERE WOULD BE A PUBLIC MARKET FOR YOUR SHARES?

01:01PM 9 A. WELL, AGAIN, IT'S NUANCED.

01:01PM 10 WE HAD COMMUNICATION AT EVERY STAGE THAT THEY WERE

01:01PM 11 PLANNING AN IPO AND THEY GAVE US A TIMETABLE AT SEVERAL STAGES.

01:01PM 12 FIRST IT WAS THREE TO FIVE YEARS, AND THEN THEY SPECIFICALLY

01:01PM 13 OUTLINED YEARS IT WAS GOING TO HAPPEN IN 2011 AT THE LATEST.

01:01PM 14 SO THERE WERE A SERIES OF STATEMENTS WHERE THEY GAVE

01:01PM 15 STRONG INDICATION THAT THEY WOULD PURSUE AN IPO.

01:02PM 16 Q. RIGHT. BUT THAT'S NOT MY QUESTION, MR. EISENMAN.

01:02PM 17 MY QUESTION, MR. EISENMAN, IS, DID THERANOS EVER GUARANTEE

01:02PM 18 TO YOU THAT THERE WOULD BE A PUBLIC MARKET WHERE YOU COULD SELL

01:02PM 19 YOUR SHARES? YES OR NO?

01:02PM 20 A. NO.

01:02PM 21 Q. NOW, YOU ALSO KNEW THAT TO BUY THERANOS STOCK, YOU HAD TO

01:02PM 22 BE AN ACCREDITED INVESTOR; IS THAT RIGHT?

01:02PM 23 A. YES.

01:02PM 24 Q. AND WHAT THAT MEANS IS THAT YOU NEEDED TO HAVE A CERTAIN

01:02PM 25 LEVEL OF NET WORTH; RIGHT?

01:02PM 1 A. CORRECT.

01:02PM 2 Q. AND YOU REPRESENTED, WHEN YOU ENTERED INTO THE AGREEMENT

01:02PM 3 TO BUY THERANOS SHARES, THAT YOU COULD BEAR THE RISK OF LOSING

01:02PM 4 THAT INVESTMENT; IS THAT RIGHT?

01:02PM 5 A. YES.

01:02PM 6 Q. AND THAT IT WOULDN'T IMPAIR YOUR FINANCIAL CONDITION IF

01:02PM 7 YOU LOST YOUR INVESTMENT; CORRECT?

01:02PM 8 A. CORRECT.

01:02PM 9 Q. AND WHEN YOU SIGNED THAT SHARE PURCHASE AGREEMENT IN 2006,

01:03PM 10 YOU MADE THOSE REPRESENTATIONS; RIGHT?

01:03PM 11 A. YES.

01:03PM 12 Q. OKAY. AND FOR YOUR 2006 INVESTMENT, YOU ALSO REPRESENTED

01:03PM 13 THAT YOU WERE AWARE THAT THIS WAS A SPECULATIVE INVESTMENT;

01:03PM 14 CORRECT?

01:03PM 15 A. WELL, AGAIN, THAT'S NUANCED. THAT'S WHAT THE LANGUAGE

01:03PM 16 SAYS IN THE PRIVATE PLACEMENT, OR THE AGREEMENT THAT I SIGNED,

01:03PM 17 WHICH IS SIMILAR TO AGREEMENTS THAT YOU ARE REQUESTED TO SIGN

01:03PM 18 ANY TIME YOU INVEST IN AN EARLY STAGE COMPANY, BUT IT SOMEWHAT

01:03PM 19 CONTRADICTED THE INFORMATION FLOW THAT I GOT BEFORE I MADE MY

01:03PM 20 INVESTMENT.

01:03PM 21 Q. OKAY. SO WITH REGARD TO THE 2006 AGREEMENT, IT WAS AN

01:03PM 22 AGREEMENT TO BUY SHARES; RIGHT?

01:03PM 23 A. YES.

01:03PM 24 Q. AND YOU SIGNED THE AGREEMENT; RIGHT?

01:03PM 25 A. YES.

01:03PM 1 Q. AND THERE WAS A PARAGRAPH IN THE AGREEMENT THAT SAID THIS
01:03PM 2 IS A SPECULATIVE INVESTMENT; IS THAT CORRECT? YES OR NO?
01:03PM 3 A. YES, CORRECT.
01:03PM 4 Q. REGARDING YOUR 2006 INVESTMENT, YOU INVESTED A TOTAL OF
01:04PM 5 \$1,134,243; IS THAT RIGHT?
01:04PM 6 A. YES.
01:04PM 7 Q. AND THE NUMBER OF SHARES THAT YOU BOUGHT WAS 402,214
01:04PM 8 SHARES?
01:04PM 9 A. YES.
01:04PM 10 Q. OKAY. AND THE PRICE PER SHARE IN 2006 WAS \$2.82; IS THAT
01:04PM 11 RIGHT?
01:04PM 12 A. YES.
01:04PM 13 Q. OKAY. SO AFTER YOUR 2006 INVESTMENT, YOU TESTIFIED THAT
01:04PM 14 YOU GOT QUARTERLY UPDATES FROM THE COMPANY; CORRECT?
01:04PM 15 A. CORRECT.
01:04PM 16 Q. AND YOU GOT THOSE FROM MS. HOLMES; RIGHT?
01:04PM 17 A. CORRECT.
01:04PM 18 Q. AND THEY, AGAIN, THEY WERE EXCLUSIVELY FROM MS. HOLMES;
01:04PM 19 RIGHT?
01:04PM 20 A. CORRECT.
01:04PM 21 Q. AND YOU UNDERSTOOD, OR YOU NOW UNDERSTAND THAT MR. BALWANI
01:05PM 22 DID NOT EVEN JOIN THERANOS UNTIL 2009; IS THAT RIGHT?
01:05PM 23 A. I DON'T RECALL WHEN HE JOINED.
01:05PM 24 Q. OKAY. BUT YOU KNOW HE WASN'T THERE IN 2006; RIGHT?
01:05PM 25 A. I DON'T KNOW THAT FOR A FACT, BUT I PRESUME SO.

01:05PM 1 Q. BECAUSE YOU NEVER COMMUNICATED WITH HIM AT THAT TIME;
01:05PM 2 CORRECT?

01:05PM 3 A. THAT IS CORRECT.

01:05PM 4 Q. AND YOU NEVER EVEN HEARD OF HIM AT THAT TIME; RIGHT?

01:05PM 5 A. CORRECT.

01:05PM 6 Q. YOU ALSO UNDERSTOOD, MR. EISENMAN, DIDN'T YOU, THAT YOU
01:05PM 7 HAD NO LEGAL RIGHT TO ADDITIONAL INFORMATION ABOUT THE COMPANY;
01:05PM 8 CORRECT?

01:05PM 9 A. CORRECT.

01:05PM 10 Q. ALL RIGHT. SO NOW LET'S TURN TO THE TIME PERIOD 2010 TO
01:05PM 11 2013.

01:05PM 12 AND I'M GOING TO ASK YOU TO TURN IN YOUR BINDER TO
01:05PM 13 EXHIBIT 4 -- SORRY. EXHIBIT 14103.

01:06PM 14 A. OKAY.

01:06PM 15 Q. OKAY. LET ME JUST GET THERE.

01:06PM 16 ALL RIGHT. 14103 IS AN EMAIL CHAIN BETWEEN YOU AND
01:06PM 17 MS. HOLMES, IS IT NOT?

01:06PM 18 A. YES.

01:06PM 19 Q. AND THE DATE OF THE CHAIN RANGES FROM MAY 3RD TO MAY 11TH,
01:06PM 20 2010; RIGHT?

01:06PM 21 A. YES.

01:06PM 22 Q. AND THIS IS ABOUT YOU ATTEMPTING TO GET UPDATES FROM
01:06PM 23 MS. HOLMES ABOUT THERANOS; RIGHT?

01:06PM 24 A. RIGHT.

01:06PM 25 MS. WALSH: YOUR HONOR, WE OFFER 14103.

01:06PM 1 MR. BOSTIC: NO OBJECTION.

01:06PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:06PM 3 (DEFENDANT'S EXHIBIT 14103 WAS RECEIVED IN EVIDENCE.)

01:06PM 4 BY MS. WALSH:

01:06PM 5 Q. OKAY. SO LET'S GO TO THE FIRST EMAIL IN TIME.

01:07PM 6 (DISCUSSION OFF THE RECORD.)

01:07PM 7 THE CLERK: I DON'T KNOW WHAT IS WRONG WITH THE

01:07PM 8 SCREEN.

01:07PM 9 MS. WALSH: I THINK IT'S JUST MINE.

01:07PM 10 THE COURT: ARE THE JUROR'S SCREENS UP?

01:07PM 11 YES. ALL RIGHT.

01:07PM 12 MS. WALSH: I CAN USE MY HARD COPY UNTIL WE FIX IT.

01:07PM 13 THE COURT: THANK YOU.

01:07PM 14 BY MS. WALSH:

01:07PM 15 Q. OKAY. SO TURNING TO THE FIRST EMAIL IN TIME, THAT'S ON

01:07PM 16 MAY 3RD, 2010; RIGHT?

01:08PM 17 A. YES.

01:08PM 18 Q. DO YOU SEE THAT, MR. EISENMAN?

01:08PM 19 A. YES.

01:08PM 20 Q. OKAY. AND IT'S FROM YOU TO ELIZABETH HOLMES; RIGHT?

01:08PM 21 A. YES.

01:08PM 22 Q. AND YOU'RE CC'ING CAROLYN BALKENHOL; RIGHT?

01:08PM 23 A. YES.

01:08PM 24 Q. AND WHO WAS CAROLYN BALKENHOL?

01:08PM 25 A. ELIZABETH'S ADMINISTRATIVE ASSISTANT.

01:08PM 1 Q. OKAY. AND THE SUBJECT LINE IS JUNE QUARTERLY UPDATE.

01:08PM 2 DO YOU SEE THAT?

01:08PM 3 A. YES.

01:08PM 4 Q. AND WHAT YOU SAY IS, "ELIZABETH,

01:08PM 5 "CAN WE SCHEDULE OUR QUARTERLY UPDATE THE WEEK OF JUNE 1ST

01:08PM 6 THROUGH JUNE 4TH?

01:08PM 7 "SINCE IT HAS BEEN 2 MONTHS SINCE WE TALKED, AND WILL

01:08PM 8 PROBABLY BE ANOTHER MONTH UNTIL WE TALK AGAIN, I WAS WONDERING

01:08PM 9 IF YOU COULD EMAIL ME A RESPONSE TO THE FOLLOWING ITEMS?"

01:08PM 10 AND THEN YOU LIST ITEMS THAT YOU WANT INFORMATION ON?

01:08PM 11 A. YES.

01:08PM 12 Q. DO YOU SEE THAT?

01:08PM 13 A. YES.

01:08PM 14 Q. AND THE FIRST ITEM, YOU SAY, "YOU SAID THAT IN MARCH, YOU

01:08PM 15 WERE MANUFACTURING ABOUT 500,000 CARTRIDGES AND SELLING ABOUT

01:08PM 16 400,000 AT ABOUT \$80 PER CARTRIDGE. CAN YOU SHARE THE SAME

01:09PM 17 STATISTICS FOR APRIL, AND AN ESTIMATE FOR MAY?"

01:09PM 18 DO YOU SEE THAT?

01:09PM 19 A. YES.

01:09PM 20 Q. AND THE SECOND QUESTION YOU ASK IS, "ARE YOU ENTERTAINING

01:09PM 21 ANY THOUGHTS OF A SHAREHOLDER'S MEETING? IF SO, WHEN?"

01:09PM 22 AND THE THIRD QUESTION IS, "IS THERE A POSSIBILITY OF AN

01:09PM 23 IPO IN THE FORESEEABLE FUTURE. IF SO, WHEN?"

01:09PM 24 DO YOU SEE THAT?

01:09PM 25 A. YES.

01:09PM 1 Q. OKAY. AND THEN THE NEXT EMAIL UP IS AGAIN FROM YOU TO
01:09PM 2 MS. HOLMES AND YOU SAY, "WOULD IT BE POSSIBLE TO GET A RESPONSE
01:09PM 3 TODAY? I HAVE BEEN TRYING SINCE LAST MONDAY."
01:09PM 4 DO YOU SEE THAT?
01:09PM 5 A. YES.
01:09PM 6 Q. AND THEN IT LOOKS LIKE YOU EMAIL AGAIN JUST WITH NO TEXT;
01:09PM 7 RIGHT?
01:09PM 8 DO YOU SEE THAT IN THE MIDDLE AT 8:12 A.M.?
01:09PM 9 A. YES.
01:09PM 10 Q. OKAY. AND THEN LET'S GO TO THE NEXT EMAIL UP. AND THIS
01:09PM 11 IS FROM MS. HOLMES TO YOU AND SHE SAYS, "ALAN,
01:09PM 12 "I RECEIVED YOUR EMAILS, AND CAROLYN JUST RELAYED TO ME
01:10PM 13 THE VOICEMAIL YOU LEFT TODAY. JUNE IS A TOUGH MONTH FOR US AND
01:10PM 14 I DON'T KNOW WHEN WE CAN DO OUR NEXT CALL. AS YOU KNOW, WE
01:10PM 15 DON'T DO QUARTERLY CALLS WITH OUR OTHER INVESTORS, MANY OF WHOM
01:10PM 16 INVESTED MUCH GREATER AMOUNTS THAN YOU DID, AND I CANNOT COMMIT
01:10PM 17 TO AN EXACT QUARTERLY SCHEDULE GOING FORWARD."
01:10PM 18 DO YOU SEE THAT?
01:10PM 19 A. YES.
01:10PM 20 Q. AND THE NEXT PARAGRAPH SAYS, "AS DISCUSSED IN OUR CALL IN
01:10PM 21 MARCH, WE CANNOT PROVIDE THE LEVEL OF COMMUNICATION YOU KEEP
01:10PM 22 REQUESTING."
01:10PM 23 DO YOU SEE THAT?
01:10PM 24 A. YES.
01:10PM 25 Q. AND THEN SHE CONTINUES.

01:10PM 1 "WITH THE DEALS WE ARE FORMALIZING WITH RETAILERS, WE ARE
01:10PM 2 NOW OBLIGATED NOT TO DISCLOSE OUR PRODUCTION VOLUMES AND
01:10PM 3 CARTRIDGE SALE PRICES. I CANNOT PROVIDE THE METRICS YOU ARE
01:10PM 4 REQUESTING IN YOUR EMAIL."

01:10PM 5 AND THEN SHE GOES ON.

01:10PM 6 "AT THIS POINT, WE ALSO DON'T HAVE ANY PLANS TO DO AN IPO
01:10PM 7 ANY TIME SOON. IN LINE WITH MY COMMENT ABOVE, WE CURRENTLY DO
01:11PM 8 NOT HAVE A SHAREHOLDERS MEETING ON THE CALENDAR. I WILL BE
01:11PM 9 REACHING OUT TO ALL SHAREHOLDERS IN THE COMING WEEKS TO
01:11PM 10 CIRCULATE THE OPPORTUNITY FOR LIQUIDATION I REFERENCED ON OUR
01:11PM 11 LAST CALL WITH EVERYONE."

01:11PM 12 DO YOU SEE THAT?

01:11PM 13 A. YES.

01:11PM 14 Q. AND THIS IS IN MAY 2010; RIGHT?

01:11PM 15 A. YES.

01:11PM 16 Q. OKAY.

01:11PM 17 THE LAST PARAGRAPH SAYS, "GIVEN YOUR FRUSTRATION LEVEL AND
01:11PM 18 OUR FRUSTRATION LEVEL WITH THIS INTERACTION, I STRONGLY
01:11PM 19 ENCOURAGE YOU TO RE-CONSIDER THE OPPORTUNITY I PRESENTED ON OUR
01:11PM 20 LAST CALL TO REALIZE THE RETURN ON YOUR INVESTMENT. WE
01:11PM 21 RECOGNIZE YOU HAVE BEEN AN INVESTOR FOR SOME TIME, AND IF WE
01:11PM 22 PROCEED WITH THE TRANSACTION WE ARE PROPOSING WE CAN PROVIDE
01:11PM 23 YOU WITH A GREATER THAN 5 TIMES RETURN ON YOUR INVESTMENT IN
01:11PM 24 THERANOS.

01:11PM 25 "PLEASE LET ME KNOW."

01:11PM 1 DO YOU SEE THAT?

01:11PM 2 A. YES.

01:11PM 3 Q. OKAY. AND AT THE TIME YOU GOT THIS EMAIL, YOU HAD NOT

01:12PM 4 SEEN ANY DOCUMENTS AT THE TIME RELATED TO ANY RETAIL

01:12PM 5 RELATIONSHIPS THERANOS WAS ENGAGING IN; IS THAT RIGHT?

01:12PM 6 A. YES.

01:12PM 7 Q. AND YOU WERE NOT AWARE AT THE TIME IF THERE WERE ANY

01:12PM 8 RESTRICTIONS PLACED ON THERANOS BY THE RETAIL RELATIONSHIPS ON

01:12PM 9 THE INFORMATION THEY COULD PROVIDE TO SHAREHOLDERS; IS THAT

01:12PM 10 RIGHT?

01:12PM 11 A. YES.

01:12PM 12 Q. AND YOU ALSO DON'T KNOW WHETHER THE FINAL AGREEMENT --

01:12PM 13 WHETHER IN THE FINAL AGREEMENT THERE WAS ANY RESTRICTION ON THE

01:12PM 14 INFORMATION THAT THERANOS COULD PROVIDE; CORRECT?

01:12PM 15 A. CORRECT.

01:12PM 16 Q. BECAUSE YOU NEVER SAW THE FINAL AGREEMENT; IS THAT RIGHT?

01:12PM 17 A. YES.

01:12PM 18 Q. OKAY. OKAY. NOW IF YOU CAN TURN IN YOUR BINDER TO

01:12PM 19 EXHIBIT 12285.

01:13PM 20 DO YOU HAVE THAT IN FRONT OF YOU?

01:13PM 21 A. YES.

01:13PM 22 Q. OKAY. AND SO THIS IS AN EMAIL CHAIN BETWEEN YOU AND

01:13PM 23 MS. HOLMES; CORRECT?

01:13PM 24 A. YES.

01:13PM 25 Q. AND IT IS ON -- OR IT SPANS JUNE 8TH TO JUNE 18TH, 2010;

01:13PM 1 RIGHT?

01:13PM 2 A. YES.

01:13PM 3 Q. AND, AGAIN, IT RELATES TO YOUR SEEKING INFORMATION FROM
01:13PM 4 THERANOS; IS THAT RIGHT?

01:13PM 5 A. YES.

01:13PM 6 MS. WALSH: YOUR HONOR, WE OFFER 12285.

01:13PM 7 MR. BOSTIC: 801, YOUR HONOR.

01:13PM 8 MS. WALSH: SO, YOUR HONOR, THIS AT LEAST GOES TO
01:14PM 9 MR. EISENMAN'S STATE OF MIND AS HE'S CONSIDERING INVESTING IN
01:14PM 10 THERANOS.

01:14PM 11 THE COURT: SO NOT FOR THE TRUTH OF THE MATTER
01:14PM 12 ASSERTED IN THE EMAIL? IS THAT WHAT YOU'RE SAYING?

01:14PM 13 MS. WALSH: I MEAN, I DON'T THINK IT'S AN 801
01:14PM 14 PROBLEM, BUT TO THE EXTENT THAT THE COURT HAS ANY RESERVATION,
01:14PM 15 IT CERTAINLY IS RELEVANT AND NOT HEARSAY AS TO MR. EISENMAN'S
01:14PM 16 STATE OF MIND.

01:14PM 17 (PAUSE IN PROCEEDINGS.)

01:14PM 18 MR. BOSTIC: ON THAT POINT, YOUR HONOR, I'M NOT SURE
01:14PM 19 THE FOUNDATION HAS BEEN LAID, BUT THIS ACTUALLY IMPACTED THIS
01:14PM 20 WITNESS'S STATE OF MIND.

01:15PM 21 THE COURT: DO YOU WANT TO LAY A FOUNDATION FOR THE
01:15PM 22 STATE OF MIND ISSUE IF YOU CAN?

01:15PM 23 MS. WALSH: SURE. SURE, YOUR HONOR.

01:15PM 24 Q. SO OVER THE COURSE OF THE YEARS, MR. EISENMAN, YOU WERE
01:15PM 25 TRYING TO GET INFORMATION FROM THERANOS; RIGHT?

01:15PM 1 A. YES.

01:15PM 2 Q. AND YOU SENT MANY EMAILS TO TRY TO DO THAT; CORRECT?

01:15PM 3 A. CORRECT.

01:15PM 4 Q. AND YOU ENGAGED IN EMAIL CORRESPONDENCE WITH MS. HOLMES

01:15PM 5 ESPECIALLY TO TRY TO GET INFORMATION FROM HER; RIGHT?

01:15PM 6 A. YES.

01:15PM 7 Q. AND IT WAS IMPORTANT FOR YOU TO GET INFORMATION FROM

01:15PM 8 THERANOS; CORRECT?

01:15PM 9 A. CORRECT.

01:15PM 10 Q. AND YOU HAD A LOT OF BACK AND FORTH WITH MS. HOLMES ABOUT

01:15PM 11 QUESTIONS YOU HAD AND RESPONSES THAT SHE GAVE; CORRECT?

01:15PM 12 A. CORRECT.

01:15PM 13 Q. AND IT WAS IMPORTANT TO YOUR DECISION TO INVEST AS TO THE

01:15PM 14 LEVEL OF INFORMATION THAT YOU WERE GETTING; RIGHT?

01:15PM 15 A. WELL, THIS IS 2010. I INVESTED IN 2006 AND AGAIN IN 2013.

01:16PM 16 SO THIS DIDN'T DIRECTLY RELATE TO MY DECISION TO INVEST.

01:16PM 17 Q. RIGHT. BUT OVER THE COURSE OF TIME, MR. EISENMAN, YOU

01:16PM 18 WERE EMAILING QUITE FREQUENTLY TO GET INFORMATION FROM

01:16PM 19 THERANOS, WERE YOU NOT?

01:16PM 20 A. CORRECT.

01:16PM 21 Q. AND THIS IS ONE OF THOSE EMAILS; RIGHT?

01:16PM 22 A. YES.

01:16PM 23 Q. AND GENERALLY GETTING INFORMATION FROM THERANOS WAS

01:16PM 24 IMPORTANT TO YOUR DECISION, TO YOUR INVESTMENT DECISIONS;

01:16PM 25 CORRECT?

01:16PM 1 A. WELL, AGAIN, THIS IS 2010 AND I INVESTED FOUR YEARS BEFORE
01:16PM 2 AND MY NEXT INVESTMENT WAS THREE YEARS LATER.

01:16PM 3 SO IT DID NOT DIRECTLY RELATE TO A DECISION TO INVEST.

01:16PM 4 Q. RIGHT. BUT IT WAS IMPORTANT GENERALLY FOR YOU TO GET
01:16PM 5 INFORMATION FROM THERANOS, WASN'T IT?

01:16PM 6 A. YES.

01:16PM 7 MS. WALSH: YOUR HONOR, WE OFFER 12285.

01:16PM 8 MR. BOSTIC: 801, 403.

01:16PM 9 MS. WALSH: YOUR HONOR, THIS WITNESS HAS TESTIFIED
01:16PM 10 ABOUT TRYING TO GET INFORMATION FROM THERANOS, AND THIS IS JUST
01:16PM 11 ANOTHER EXAMPLE OF HIM TRYING TO DO THIS.

01:17PM 12 MR. BOSTIC: YOUR HONOR, NO OBJECTION TO THE
01:17PM 13 COMMUNICATION FROM THE WITNESS THAT SHOWS THAT.

01:17PM 14 MS. WALSH: YOUR HONOR, THIS WITNESS HAS ALSO
01:17PM 15 TESTIFIED ABOUT THE IMPORTANCE OF LIQUIDATION EVENTS AND THIS
01:17PM 16 EMAIL DIRECTLY RESPONDS TO THAT.

01:17PM 17 AND EVEN IF WHAT IS IN IT IS TRUE OR NOT TRUE, IT GOES TO
01:17PM 18 HIS STATE OF MIND REGARDING THE OPPORTUNITIES TO LIQUIDATE.

01:17PM 19 THE COURT: DO YOU WANT TO ASK HIM ABOUT THAT?

01:17PM 20 MS. WALSH: SURE.

01:17PM 21 Q. SO, MR. EISENMAN, SINCE YOU INVESTED IN 2006, YOU ASKED
01:17PM 22 MANY QUESTIONS ABOUT WHEN IT WAS THAT THERE WOULD BE AN
01:17PM 23 OPPORTUNITY TO LIQUIDATE YOUR INVESTMENT IN THERANOS; IS THAT
01:18PM 24 RIGHT?

01:18PM 25 A. NOT EXACTLY.

01:18PM 1 I, I QUESTIONED THE COMPANY, OR ELIZABETH, ALONG THE WAY
01:18PM 2 ABOUT THE POTENTIAL FOR IPO, AND UPON AN IPO, THAT DOESN'T
01:18PM 3 NECESSARILY MEAN THAT I WOULD LIQUIDATE, BUT THERE WOULD BE AN
01:18PM 4 OPPORTUNITY IF THERE WAS A PUBLIC MARKET.

01:18PM 5 Q. SO YOU QUESTIONED MS. HOLMES ABOUT OPPORTUNITIES TO
01:18PM 6 LIQUIDATE; IS THAT RIGHT?

01:18PM 7 A. NO. I QUESTIONED HER ABOUT OPPORTUNITIES ABOUT THE
01:18PM 8 POTENTIAL TIMING FOR AN IPO.

01:18PM 9 Q. AND AN IPO IS AN OPPORTUNITY TO LIQUIDATE, ISN'T IT?

01:18PM 10 A. IT MEANS THAT THERE IS A PUBLIC MARKET AND THEN YOU MAKE A
01:18PM 11 DECISION WHETHER TO LIQUIDATE.

01:18PM 12 I WAS NOT CONTEMPLATING A LIQUIDATION IN ANY OF THESE
01:18PM 13 CONVERSATIONS. I WAS TRYING TO DETERMINE IF AND WHEN THERE
01:18PM 14 WOULD BE AN IPO.

01:18PM 15 SO, YES, THAT OPPORTUNITY WOULD BE THERE. BUT THAT
01:18PM 16 DOESN'T NECESSARILY MEAN THAT I WOULD TAKE ADVANTAGE OF THAT
01:18PM 17 OPPORTUNITY.

01:18PM 18 Q. RIGHT.

01:18PM 19 SO AN IPO GIVES YOU THE OPPORTUNITY TO LIQUIDATE YOUR
01:19PM 20 THERANOS SHARES; IS THAT RIGHT?

01:19PM 21 A. THAT'S CORRECT.

01:19PM 22 MS. WALSH: YOUR HONOR, WE OFFER 12285.

01:19PM 23 THE COURT: YOU KNOW, IT SEEMS TO ME THAT THIS
01:19PM 24 INFORMATION IS ALREADY IN FRONT OF THE JURY THROUGH ANOTHER --
01:19PM 25 I DO SEE SOME 801 ISSUES WITH THE FIRST PAGE, PAGE 1.

01:19PM 1 LET ME JUST SUSTAIN THE OBJECTION AT THIS POINT, AND IF
01:19PM 2 YOU WANT TO LAY A FOUNDATION TO CHANGE THAT?

01:19PM 3 MS. WALSH: OKAY. AND, YOUR HONOR, ON THE HEARSAY
01:19PM 4 ISSUE, EVEN IF IT'S NOT COMING IN FOR THE TRUTH, SO THERE
01:19PM 5 WOULDN'T BE ANY 801 ISSUE.

01:19PM 6 THE COURT: WELL, I SUPPOSE THEN IT'S A 104 ISSUE.
01:19PM 7 WHAT IS THE RELEVANCE OF SOME OF THIS OTHER -- THE COLLOQUY
01:19PM 8 HERE?

01:19PM 9 MS. WALSH: JUST THE OPPORTUNITIES TO LIQUIDATE AND
01:19PM 10 THE QUESTIONS ABOUT --

01:19PM 11 THE COURT: I'M SORRY TO INTERRUPT YOU.

01:20PM 12 THE SECOND PARAGRAPH MIGHT HAVE 403 ISSUES.

01:20PM 13 MS. WALSH: THE SECOND PARAGRAPH OF MS. HOLMES'S
01:20PM 14 EMAIL?

01:20PM 15 THE COURT: YES.

01:20PM 16 MS. WALSH: I SEE.

01:20PM 17 WE CAN REDACT THAT PARAGRAPH.

01:20PM 18 I'M REALLY INTERESTED IN ONE SENTENCE IN THE FIRST
01:20PM 19 PARAGRAPH, THE THIRD PARAGRAPH, AND SOME OF THE BULLETS.

01:20PM 20 THAT SECOND PARAGRAPH, I'M HAPPY TO REDACT THAT.

01:20PM 21 THE COURT: OKAY. ALL RIGHT.

01:20PM 22 IF YOU COULD REDACT THE SECOND PARAGRAPH IN MS. HOLMES'S
01:20PM 23 EMAIL --

01:20PM 24 MS. WALSH: GREAT.

01:20PM 25 THE COURT: -- THEN I'LL ALLOW THIS TO COME IN.

01:20PM 1 MS. WALSH: OKAY. THANK YOU.

01:20PM 2 AND CAN IT BE PUBLISHED WITH THAT REDACTION?

01:20PM 3 THE COURT: YES. YES.

01:20PM 4 MS. WALSH: GREAT.

01:20PM 5 (DEFENDANT'S EXHIBIT 12285, REDACTED, WAS RECEIVED IN

01:20PM 6 EVIDENCE.)

01:20PM 7 BY MS. WALSH:

01:20PM 8 Q. SO TURNING TO THE FIRST EMAIL IN TIME, MR. EISENMAN, THIS

01:20PM 9 IS TUESDAY, JUNE 8TH, 2010, FROM YOU TO MS. HOLMES REGARDING A

01:20PM 10 JUNE CALL.

01:20PM 11 AND YOU SAY, "ELIZABETH,

01:21PM 12 I HAVE BEEN TRYING TO CONTACT YOU OR CAROLYN" --

01:21PM 13 THAT'S MS. HOLMES'S ASSISTANT; RIGHT?

01:21PM 14 A. YES.

01:21PM 15 Q. -- "FOR THE PAST WEEK BY EMAIL AND PHONE TO SCHEDULE OUR

01:21PM 16 JUNE CALL, AND A JULY MEETING. IN MY 23 YEARS IN THE

01:21PM 17 INVESTMENT BUSINESS, I HAVE NEVER BEEN TREATED WITH SUCH

01:21PM 18 DISREGARD. MY INVESTMENT MAY PALE IN COMPARISON TO SOME OF

01:21PM 19 YOUR OTHER INVESTORS, BUT IT IS EXTREMELY MATERIAL TO ME. WILL

01:21PM 20 YOU OR CAROLYN PLEASE RESPOND REGARDING THE JUNE CALL AND THE

01:21PM 21 JULY MEETING."

01:21PM 22 AND THEN MS. HOLMES RESPONDS TO YOU AND SHE SAYS, "ALAN,

01:21PM 23 "AS I HAVE COMMUNICATED MULTIPLE TIMES, WE CANNOT COMMIT

01:21PM 24 TO QUARTERLY INVESTOR UPDATES, ESPECIALLY ON AN EXACT SCHEDULE.

01:21PM 25 WE ARE WORKING ON PROCESSING YOUR REQUEST TO GET YOU THE PAPERS

01:21PM 1 ON THE TRANSACTION TO SELL YOUR SHARES. WE NEED TO PROCESS
01:21PM 2 THAT BEFORE SCHEDULING ANY MEETING AT THERANOS -- WHICH WOULD
01:21PM 3 NOT BE NECESSARY AT THAT POINT."

01:21PM 4 AND THEN GOING DOWN TO THE PARAGRAPH STARTING WITH "AS YOU
01:21PM 5 HAVE ACKNOWLEDGED, THERANOS IS AN EARLY STAGE LIFE SCIENCES
01:22PM 6 STARTUP AND BY IT'S VERY NATURE CARRIES IMMENSE RISK AND
01:22PM 7 UNPREDICTABILITY AS YOU ALREADY KNOW AS A SAVVY INVESTOR. THIS
01:22PM 8 MAY NOT CHANGE FOR YEARS TO COME."

01:22PM 9 DO YOU SEE THAT, MR. EISENMAN?

01:22PM 10 A. YES.

01:22PM 11 Q. OKAY. AND THEN GOING DOWN TO THE SECOND BULLET WHERE SHE
01:22PM 12 SAYS, "I HAVE INCLUDED ANSWERS TO YOUR QUESTIONS FROM YOUR
01:22PM 13 VARIOUS EMAILS BELOW."

01:22PM 14 THE SECOND BULLET SAYS, "PER YOUR QUESTION, WE DID NOT
01:22PM 15 ACHIEVE \$200 MILLION IN SALES IN 2009."

01:22PM 16 DO YOU SEE THAT?

01:22PM 17 A. YES.

01:22PM 18 Q. SO SHE'S TELLING YOU WHAT THERANOS DID NOT ACHIEVE; RIGHT?

01:22PM 19 A. RIGHT.

01:22PM 20 Q. AND THEN IF WE GO DOWN TO THE FOURTH BULLET, SHE SAYS, "WE
01:22PM 21 CURRENTLY DO NOT HAVE PLANS TO GO IPO BY THE END OF 2011 AND DO
01:22PM 22 NOT HAVE 'A NEW WINDOW' PER YOUR EMAIL."

01:22PM 23 DO YOU SEE THAT?

01:22PM 24 A. YES.

01:22PM 25 Q. OKAY. WE CAN TAKE THAT DOWN.

01:23PM 1 IF YOU CAN TURN IN YOUR BINDER TO 14224.

01:23PM 2 A. OKAY.

01:23PM 3 Q. IS THAT AN EMAIL BETWEEN YOU AND MS. HOLMES, CC'ING
01:23PM 4 DAVID HARRIS AND CAROLYN BALKENHOL?

01:23PM 5 A. YES.

01:23PM 6 Q. AND THAT'S -- THE DATE OF THE EMAIL IS JULY 1ST, 2010; IS
01:23PM 7 THAT RIGHT?

01:23PM 8 A. YES.

01:23PM 9 Q. AND IT RELATES TO A DECISION TO SELL STOCK; CORRECT?

01:23PM 10 A. YES.

01:23PM 11 MS. WALSH: YOUR HONOR, WE OFFER 14224.

01:23PM 12 MR. BOSTIC: NO OBJECTION.

01:23PM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:23PM 14 (DEFENDANT'S EXHIBIT 14224 WAS RECEIVED IN EVIDENCE.)

01:23PM 15 BY MS. WALSH:

01:23PM 16 Q. OKAY. SO THIS EMAIL, MR. EISENMAN, IS ABOUT A MONTH AFTER
01:23PM 17 THE EMAIL THAT WE LAST -- JUST SAW FROM MS. HOLMES WHERE SHE
01:23PM 18 WAS TALKING ABOUT AN OFFER TO -- SO THAT YOU COULD SELL YOUR
01:24PM 19 STOCK; RIGHT?

01:24PM 20 A. RIGHT.

01:24PM 21 Q. AND WHAT YOU SAY IN THIS EMAIL IS, "ELIZABETH,

01:24PM 22 "I HAVEN'T MADE A DECISION WHETHER TO SELL STOCK."

01:24PM 23 AND THEN, "ACCORDINGLY, I WOULD GREATLY APPRECIATE IF YOU
01:24PM 24 WOULD TRY TO SCHEDULE OUR QUARTERLY UPDATE," AND SO FORTH.

01:24PM 25 DO YOU SEE THAT?

01:24PM 1 A. YES.

01:24PM 2 Q. AND SO YOU HADN'T DECIDED WHETHER YOU WERE GOING TO SELL

01:24PM 3 YOUR STOCK; RIGHT?

01:24PM 4 A. CORRECT.

01:24PM 5 Q. OKAY. LET'S TURN TO 14225.

01:24PM 6 A. OKAY.

01:24PM 7 Q. OKAY. AND THIS IS AN EMAIL CHAIN BETWEEN YOU AND

01:24PM 8 MS. HOLMES AND MS. BALKENHOL IN JULY 2010 ALSO TALKING ABOUT

01:24PM 9 TRYING TO GET INFORMATION REGARDING THERANOS.

01:24PM 10 DO YOU SEE THAT?

01:24PM 11 A. YES.

01:24PM 12 Q. OKAY. AND IT'S -- YOU WANT TO KNOW VARIOUS PIECES OF

01:25PM 13 INFORMATION.

01:25PM 14 YOU'RE EMAILING THEM TRYING TO GET THIS INFORMATION AS A

01:25PM 15 PART OF JUST KEEPING UP WITH WHAT THERANOS WAS DOING; RIGHT?

01:25PM 16 A. YES.

01:25PM 17 Q. MONITORING YOUR INVESTMENT; CORRECT?

01:25PM 18 A. IT WAS, IT WAS MONITORING THE INVESTMENT GENERALLY.

01:25PM 19 BUT SPECIFICALLY IT WAS POTENTIALLY AN OFFER TO BUY STOCK,

01:25PM 20 SO I WAS PURSUING THAT OFFER, AND ALSO TRYING TO PURSUE WHAT

01:25PM 21 INFORMATION THEY WOULD SHARE TO MAKE AN INTELLIGENT DECISION

01:25PM 22 WHETHER OR NOT TO SELL STOCK.

01:25PM 23 Q. OKAY. SO YOU WERE MAKING IT -- YOU WANTED INFORMATION TO

01:25PM 24 MAKE AN ASSESSMENT; CORRECT?

01:25PM 25 A. CORRECT.

01:25PM 1 Q. OKAY.

01:25PM 2 YOUR HONOR, WE OFFER 14225.

01:25PM 3 MR. BOSTIC: NO OBJECTION.

01:25PM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:25PM 5 (DEFENDANT'S EXHIBIT 14225 WAS RECEIVED IN EVIDENCE.)

01:25PM 6 BY MS. WALSH:

01:25PM 7 Q. LET'S TURN TO THE FIRST EMAIL IN TIME.

01:25PM 8 THIS IS FROM YOU TO ELIZABETH HOLMES, CC'ING DAVID HARRIS

01:25PM 9 AND CAROLYN BALKENHOL, AND THAT'S ON JULY 13TH, 2010.

01:26PM 10 AND YOU SAY, "ELIZABETH,

01:26PM 11 "I HEARD YESTERDAY THAT YOU COMPLETED AN EQUITY OFFERING.

01:26PM 12 I ALSO HEARD FROM DAVID THAT THE OFFER TO BUY STOCK MAY NOT

01:26PM 13 COME UNTIL YEAR END, INSTEAD OF BY THE END OF THE SUMMER."

01:26PM 14 AND THEN YOU SAY AT THE END, "ALSO, CAN YOU PLEASE TELL ME

01:26PM 15 WHAT VALUATION THIS EQUITY ROUND WAS PRICED?"

01:26PM 16 SO YOU WANT TO KNOW THE PRICE; RIGHT?

01:26PM 17 A. RIGHT.

01:26PM 18 Q. AND THEN IN RESPONSE MS. HOLMES SAYS, "ALAN,

01:26PM 19 "PER MY PREVIOUS EMAIL I WILL CALL YOU WHEN WE HAVE

01:26PM 20 SOMETHING CONCRETE."

01:26PM 21 DO YOU SEE THAT?

01:26PM 22 A. YES.

01:26PM 23 Q. AND THEN YOU SAY, "ELIZABETH,

01:26PM 24 "I AM REALLY TRYING TO KEEP MY EMAILS TO A MINIMUM. CAN

01:26PM 25 YOU RESPOND TO MY INQUIRY BELOW ABOUT THE PRICING OF THE EQUITY

01:26PM 1 ROUND AND IF THE OFFER TO BUY OUR STOCK IS DELAYED UNTIL YEAR
01:26PM 2 END?

01:26PM 3 "ALSO, YOUR RESPONSE TO AN UPDATE CALL IS VAGUE. DO YOU
01:27PM 4 THINK YOU CAN SCHEDULE A MEETING?"

01:27PM 5 DO YOU SEE THAT?

01:27PM 6 A. YES.

01:27PM 7 Q. AND LET'S GO TO THE NEXT ONE UP IN THE EMAIL CHAIN. THIS
01:27PM 8 ONE YOU TOOK MS. HOLMES OFF OF THE CHAIN; RIGHT? THIS IS THE
01:27PM 9 ONE AT 1:14 P.M.?

01:27PM 10 A. AGAIN, I DON'T RECALL -- THIS MAY HAVE BEEN INTENDING TO
01:27PM 11 GO TO ELIZABETH AND FOR SOME REASON IT ONLY GOT SENT TO HER
01:27PM 12 ADMINISTRATIVE ASSISTANT.

01:27PM 13 Q. OKAY. BUT ELIZABETH HOLMES DOES NOT APPEAR ON THIS EMAIL;
01:27PM 14 RIGHT?

01:27PM 15 A. RIGHT.

01:27PM 16 Q. AND SO YOU'RE EMAILING HER ASSISTANT; CORRECT?

01:27PM 17 A. YES.

01:27PM 18 Q. AND THEN YOU SAY, "AS YOU CAN SEE, THIS WAS SENT ON
01:27PM 19 JULY 13TH, AND AGAIN ON JULY 16TH WITH NO RESPONSE. CAN YOU,"
01:27PM 20 THEN IN ALL CAPS, "PLEASE RESPOND TODAY?"

01:27PM 21 DO YOU SEE THAT?

01:27PM 22 A. YES.

01:27PM 23 Q. AND YOU WERE AWARE, MR. EISENMAN, THAT PUTTING ALL CAPS IN
01:27PM 24 EMAILS IS YELLING IN AN EMAIL.

01:27PM 25 WERE YOU AWARE OF THAT?

01:27PM 1

A. NO.

01:27PM 2

Q. LET'S GO TO THE NEXT PART OF THE CHAIN.

01:28PM 3

THIS IS FROM MS. HOLMES'S ASSISTANT TO YOU AND SHE SAYS,

01:28PM 4

"ALAN,

01:28PM 5

"I HAVEN'T BEEN RESPONDING, BECAUSE I DON'T HAVE ANY NEW

01:28PM 6

INFORMATION FOR YOU, AND I ASSUMED THAT WOULD ONLY FRUSTRATE

01:28PM 7

YOU. I ASSURE YOU THAT AS SOON AS I HAVE NEW INFORMATION, YOU

01:28PM 8

WILL BE THE VERY FIRST TO KNOW."

01:28PM 9

DO YOU SEE THAT?

01:28PM 10

A. YES.

01:28PM 11

Q. AND THEN LET'S GO UP TO THE NEXT PART OF THE CHAIN, WHICH

01:28PM 12

IS YOUR RESPONSE TO, AGAIN, MS. HOLMES'S ASSISTANT.

01:28PM 13

AND YOU SAY, "SURELY YOU CAN TELL ME THE PRICING OF THE

01:28PM 14

EQUITY OFFERING. IF YOU DON'T KNOW, PLEASE ASK ELIZABETH. SHE

01:28PM 15

SHOULD ALSO BE ABLE TO LET ME KNOW IF THE OFFERING MATERIALS

01:28PM 16

HAVE BEEN DELAYED. IN HER ORIGINAL COMMUNICATION TO ME, SHE

01:28PM 17

SAID WE WOULD RECEIVE THEM THIS SUMMER. IN HER COMMUNICATION

01:28PM 18

TO DAVID, SHE SAID WE WOULD RECEIVE THEM BY THE END OF THE

01:28PM 19

YEAR. IF ELIZABETH WOULD SCHEDULE OUR CALL, SHE COULD CLEAR UP

01:29PM 20

A LOT OF THIS CONFUSION. WE ARE ALMOST INTO AUGUST FOR OUR

01:29PM 21

JUNE CALL. MY WIFE IS A PARTNER IN THIS INVESTMENT, AND THE

01:29PM 22

TWO OF US REALLY DON'T APPRECIATE THE COMMUNICATION BREAKDOWN."

01:29PM 23

DO YOU SEE THAT?

01:29PM 24

A. YES.

01:29PM 25

Q. AND THEN YOU EMAIL AGAIN, I GUESS THIS IS AN HOUR LATER ON

01:29PM 1 THE SAME DAY, TO MS. HOLMES'S ASSISTANT.

01:29PM 2 "I WOULD GREATLY APPRECIATE AN ANSWER TODAY. THANKS
01:29PM 3 AGAIN, ALAN."

01:29PM 4 DO YOU SEE THAT?

01:29PM 5 A. YES.

01:29PM 6 Q. AND THEN YOU EMAIL AGAIN A COUPLE OF DAYS LATER AND YOU
01:29PM 7 SAY, "NEITHER OF US WANTS TO HAVE MULTIPLE EMAILS FOR WHAT
01:29PM 8 SHOULD BE A STRAIGHTFORWARD AND SIMPLE REQUEST FOR INFORMATION.
01:29PM 9 IS THERE A REASON YOU HAVEN'T ANSWERED THE EMAIL BELOW? I
01:29PM 10 WOULD GREATLY APPRECIATE A RESPONSE TODAY."

01:29PM 11 DO YOU SEE THAT?

01:29PM 12 A. YES.

01:29PM 13 Q. AND THEN THE NEXT EMAIL UP IS THE NEXT DAY, AND YOU EMAIL
01:29PM 14 MS. HOLMES'S ASSISTANT, COPYING MS. HOLMES AGAIN, YOU PUT HER
01:29PM 15 BACK INTO THE CHAIN, AND YOU SAY, "IS THERE A REASON MY EMAILS
01:29PM 16 ARE NOT GETTING A RESPONSE? THIS IS UPSETTING TO BOTH ME AND
01:30PM 17 MY WIFE. PLEASE CALL OR EMAIL TODAY."

01:30PM 18 DO YOU SEE THAT?

01:30PM 19 A. YES.

01:30PM 20 Q. AND THEN MS. HOLMES FINALLY RESPONDS AT THE END OF THE
01:30PM 21 CHAIN AND SHE SAYS, "ALAN,

01:30PM 22 "YOUR CONTINUED DAILY CALLS AND EMAILS AFTER WE'VE ALREADY
01:30PM 23 TOLD YOU MULTIPLE TIMES THAT WE DO NOT HAVE ADDITIONAL
01:30PM 24 INFORMATION WE CAN DISCLOSE BEYOND WHAT WE'VE ALREADY SHARED
01:30PM 25 WITH DAVID ARE UPSETTING TO US. ONCE WE HAVE ADDITIONAL

01:30PM 1 INFORMATION WE CAN SHARE WITH YOU WE WILL CONTACT YOU AS
01:30PM 2 MENTIONED MULTIPLE TIMES BEFORE -- YOU'RE NOT GETTING A
01:30PM 3 RESPONSE BECAUSE IT IS NOT AN EFFECTIVE USE OF OUR TIME TO KEEP
01:30PM 4 REPEATING THIS."

01:30PM 5 DO YOU SEE THAT?

01:30PM 6 A. YES.

01:30PM 7 Q. OKAY. WE CAN TAKE THAT DOWN.

01:30PM 8 NOW, IF YOU COULD TURN TO 14226 IN YOUR BINDER.

01:31PM 9 DO YOU SEE THAT?

01:31PM 10 A. YES.

01:31PM 11 Q. AND IS THIS ANOTHER EMAIL CHAIN BETWEEN YOU AND MS. HOLMES
01:31PM 12 TRYING TO GET INFORMATION ABOUT THERANOS?

01:31PM 13 A. YES.

01:31PM 14 Q. AND THIS IS IN SEPTEMBER 2010; IS THAT RIGHT?

01:31PM 15 A. YES.

01:31PM 16 MS. WALSH: YOUR HONOR, WE OFFER 14226.

01:31PM 17 MR. BOSTIC: NO OBJECTION.

01:31PM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:31PM 19 (DEFENDANT'S EXHIBIT 14226 WAS RECEIVED IN EVIDENCE.)

01:31PM 20 BY MS. WALSH:

01:31PM 21 Q. OKAY. TURNING TO THE FIRST EMAIL IN TIME FROM YOU TO
01:31PM 22 MS. HOLMES ON SEPTEMBER 27TH, 2010, THE SUBJECT LINE IS
01:31PM 23 LARRY ELLISON.

01:31PM 24 "ELIZABETH,

01:31PM 25 "I NOTICED THAT LARRY IS NOT CURRENTLY LISTED AS A

01:31PM 1 DIRECTOR. DID HE GO OFF THE BOARD? IF SO, WHY? ALSO, DO YOU
01:31PM 2 HAVE ANY VISIBILITY WHEN WE WILL RECEIVE INFORMATION ABOUT THE
01:31PM 3 DUTCH OFFER?"

01:31PM 4 DO YOU SEE THAT?

01:31PM 5 A. YES.

01:31PM 6 Q. OKAY. AND THEN SHE RESPONDS, "ALAN,

01:31PM 7 "I RECEIVED THIS EMAIL FROM SATURDAY AS WELL -- AT THIS

01:31PM 8 POINT, PER OUR CALL, THERE IS NO NEW INFORMATION TO BE SHARED

01:31PM 9 WITH OUR INVESTOR BASE. AS DISCUSSED, WHEN WE COMMUNICATE

01:32PM 10 ANYTHING WITH OUR INVESTOR BASE, YOU WILL BE INCLUDED ON THOSE

01:32PM 11 COMMUNICATIONS AS WELL."

01:32PM 12 DO YOU SEE THAT?

01:32PM 13 A. YES.

01:32PM 14 Q. OKAY. WE CAN TAKE THAT DOWN.

01:32PM 15 LET'S GO TO 12185.

01:32PM 16 DO YOU SEE THAT?

01:32PM 17 A. YES.

01:32PM 18 Q. OKAY. THIS IS AN EMAIL IN FEBRUARY 2011. SO WE'RE

01:32PM 19 MARCHING FORWARD IN TIME THROUGH THE YEARS. WE'RE NOW IN 2011.

01:32PM 20 AND IT'S BETWEEN YOU AND MS. HOLMES AND MR. BALWANI.

01:32PM 21 DO YOU SEE THAT?

01:32PM 22 A. YES.

01:32PM 23 Q. AND THIS IS ANOTHER EXAMPLE OF YOUR TRYING TO GET

01:33PM 24 INFORMATION ABOUT THE COMPANY AGAIN; CORRECT?

01:33PM 25 A. CORRECT.

01:33PM 1 Q. AND IT RELATES TO A POSSIBLE TENDER AND THE BUSINESS;
01:33PM 2 CORRECT?

01:33PM 3 A. CORRECT.

01:33PM 4 MS. WALSH: YOUR HONOR, WE OFFER 12185.

01:33PM 5 MR. BOSTIC: NO OBJECTION.

01:33PM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:33PM 7 (DEFENDANT'S EXHIBIT 12185 WAS RECEIVED IN EVIDENCE.)

01:33PM 8 BY MS. WALSH:

01:33PM 9 Q. ALL RIGHT. LET'S START WITH THE FIRST EMAIL IN TIME.

01:33PM 10 ON JANUARY 31ST, MR. EISENMAN, YOU EMAIL MS. HOLMES AND
01:33PM 11 MR. BALWANI.

01:33PM 12 AND WHAT YOU SAY IS "ANOTHER 2 MONTHS HAVE PASSED WITHOUT
01:33PM 13 ANY UPDATES ON THE TENDER OR THE BUSINESS. CAN WE SCHEDULE A
01:33PM 14 CALL SOMETIME OVER THE NEXT COUPLE OF WEEKS?"

01:33PM 15 AND THEN MR. BALWANI REPLIES ON FEBRUARY 1ST AND HE SAYS,
01:33PM 16 "THERE IS NO QUARTERLY UPDATE WE PROVIDE. AS MENTIONED TO YOU
01:33PM 17 BEFORE, WE WILL SEND UPDATES TO ALL INVESTORS AT THE SAME
01:33PM 18 TIME."

01:33PM 19 DO YOU SEE THAT?

01:33PM 20 A. YES.

01:34PM 21 Q. AND THEN YOU RESPOND IN THE NEXT PART OF THE CHAIN.

01:34PM 22 AND YOU'RE SENDING IT TO MR. BALWANI, BUT YOU SAY

01:34PM 23 "ELIZABETH,

01:34PM 24 "YOU HAVE PROVIDED A QUARTERLY UPDATE TO ME, AND SOMETIMES
01:34PM 25 TO OTHER INVESTORS, FROM THE TIME I INVESTED IN THERANOS OVER

01:34PM 1 4 YEARS AGO, UNTIL THE MIDDLE OF LAST YEAR. YOU ALSO INDICATED
01:34PM 2 THAT THERE WOULD BE THE KIND OF INFORMATION I WAS LOOKING FOR
01:34PM 3 WHEN THE TENDER MATERIALS WERE TO BE CIRCULATED. NOW, YOU HAVE
01:34PM 4 LEFT US TOTALLY CLUELESS IF AND WHEN THESE MATERIALS WILL BE
01:34PM 5 CIRCULATED. I UNDERSTAND YOU DON'T HAVE AN OBLIGATION TO
01:34PM 6 UPDATE US, BUT IT WOULD BE APPRECIATED IF YOU WOULD ARRANGE A
01:34PM 7 CALL."

01:34PM 8 DO YOU SEE THAT?

01:34PM 9 A. YES.

01:34PM 10 Q. AND THEN YOU EMAIL AGAIN A FEW DAYS LATER, I GUESS THREE
01:34PM 11 DAYS LATER, SAYING, "ELIZABETH,

01:34PM 12 "SENT 3 DAYS AGO WITH NO RESPONSE. CAN YOU PLEASE EMAIL
01:34PM 13 OR CALL THIS WEEKEND IF YOU ARE TOO BUSY TODAY."

01:35PM 14 AND THEN MR. BALWANI RESPONDS, "ALAN.

01:35PM 15 WE HAVE ALREADY RESPONDED TO YOUR EMAILS. NOTHING MORE TO
01:35PM 16 ADD."

01:35PM 17 DO YOU SEE THAT?

01:35PM 18 A. YES.

01:35PM 19 Q. WE CAN TAKE THAT DOWN.

01:35PM 20 LET'S GO TO 12252. AGAIN, WE ARE GOING FORWARD IN TIME.

01:35PM 21 I'LL WAIT UNTIL YOU GET THERE. OKAY.

01:35PM 22 IS THIS AN EMAIL ON MAY 16TH, 2012?

01:35PM 23 A. YES.

01:35PM 24 Q. AND IT'S FROM -- IT'S BETWEEN YOU AND A PERSON NAMED
01:35PM 25 NANCY MINNIG; CORRECT?

01:35PM 1 A. CORRECT.

01:35PM 2 Q. AND NANCY MINNIG WAS THE ASSISTANT FOR DON LUCAS; CORRECT?

01:35PM 3 A. CORRECT.

01:35PM 4 Q. AND DON LUCAS WAS ON THE BOARD OF THERANOS; RIGHT?

01:35PM 5 A. RIGHT.

01:35PM 6 Q. AND THIS IS ANOTHER EMAIL OF YOU TRYING TO GET INFORMATION

01:35PM 7 ABOUT THERANOS; CORRECT?

01:35PM 8 A. CORRECT.

01:35PM 9 MS. WALSH: YOUR HONOR, WE OFFER 12252.

01:36PM 10 MR. BOSTIC: NO OBJECTION.

01:36PM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:36PM 12 (DEFENDANT'S EXHIBIT 12252 WAS RECEIVED IN EVIDENCE.)

01:36PM 13 BY MS. WALSH:

01:36PM 14 Q. SO ON THE BOTTOM EMAIL, MS. MINNIG SAYS, "HI ALAN,

01:36PM 15 "MY APOLOGIES FOR NOT GETTING BACK TO YOU. I SPOKE TO DON

01:36PM 16 AND HE DOESN'T HAVE ANY FURTHER INFORMATION AT THIS TIME.

01:36PM 17 THERE HAVE BEEN ARTICLES IN THE NEWS AS YOU HAD MENTIONED YOU

01:36PM 18 WERE AWARE OF AND DON SUGGESTED THAT YOU CONTINUE TO FOLLOW THE

01:36PM 19 COMPANY IN THIS MANNER. WHEN THERE IS INFORMATION THAT DON CAN

01:36PM 20 SHARE WITH YOU WE WILL BE IN TOUCH."

01:36PM 21 AND THEN YOU RESPOND, "THANKS NANCY. CAN YOU ASK DON IF

01:36PM 22 IT IS REASONABLE TO EXPECT SOME TYPE OF UPDATE THIS YEAR?"

01:36PM 23 DO YOU SEE THAT?

01:36PM 24 A. YES.

01:36PM 25 Q. AND AT SOME POINT AFTER THIS EMAIL, YOU LEARNED THAT

01:36PM 1 MR. LUCAS RELAYED TO MS. HOLMES THAT YOU HAD TRIED TO CONTACT
01:36PM 2 HIM; IS THAT RIGHT?
01:36PM 3 A. YES.
01:36PM 4 Q. OKAY. SO LET'S TURN TO 713 IN YOUR BINDER.
01:37PM 5 I THINK THIS IS IN EVIDENCE, 713?
01:37PM 6 THE COURT: DO YOU SHOW IT IN EVIDENCE, THERE?
01:37PM 7 THE CLERK: NO.
01:37PM 8 THE COURT: OKAY.
01:37PM 9 BY MS. WALSH:
01:37PM 10 Q. DO YOU HAVE 713 IN FRONT OF YOU?
01:37PM 11 A. YES.
01:37PM 12 Q. AND THIS IS ANOTHER EMAIL CHAIN WITH MS. MINNIG; RIGHT?
01:37PM 13 A. RIGHT.
01:37PM 14 Q. AND THAT IS NOVEMBER 2012; CORRECT?
01:37PM 15 A. CORRECT.
01:37PM 16 Q. AND THIS IS MORE COMMUNICATIONS OF YOU TRYING TO GET
01:37PM 17 INFORMATION FROM MR. LUCAS; RIGHT?
01:37PM 18 A. CORRECT.
01:37PM 19 MS. WALSH: YOUR HONOR, WE OFFER 713.
01:37PM 20 MR. BOSTIC: NO OBJECTION.
01:37PM 21 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
01:37PM 22 (GOVERNMENT'S EXHIBIT 713 WAS RECEIVED IN EVIDENCE.)
01:38PM 23 BY MS. WALSH:
01:38PM 24 Q. LET'S GO TO PAGE 3.
01:38PM 25 AND THIS IS FROM MS. MINNIG TO MS. HOLMES ON

01:38PM 1 NOVEMBER 19TH, 2012.

01:38PM 2 AND SHE SAYS, "HELLO ELIZABETH,

01:38PM 3 "PLEASE SEE THE NOTE BELOW FROM ALAN EISENMAN. WOULD YOU

01:38PM 4 PLEASE HAVE THE APPROPRIATE PERSON GET IN TOUCH WITH HIM TO

01:38PM 5 PROVIDE A STATUS REPORT? DON DOES NOT WANT TO GET INVOLVED IN

01:38PM 6 COMMUNICATIONS REGARDING THERANOS WITH ANY OF ITS

01:38PM 7 SHAREHOLDERS."

01:38PM 8 DO YOU SEE THAT?

01:38PM 9 A. YES.

01:38PM 10 Q. AND THEN SHE EMAILS YOU AND SAYS, "ALAN," -- "SHE" BEING

01:38PM 11 MS. HOLMES; RIGHT? MS. HOLMES EMAILS YOU; RIGHT?

01:38PM 12 A. RIGHT.

01:38PM 13 Q. AND SHE SAYS, "ALAN,

01:38PM 14 "WE HAVE COMMUNICATED ABOUT THIS MULTIPLE TIMES BEFORE,

01:38PM 15 YET YOU CHOOSE TO CONTINUE TO GO DOWN THIS PATH."

01:38PM 16 DO YOU SEE THIS?

01:38PM 17 A. YES.

01:39PM 18 Q. AND THEN YOU REPLY TO HER, "ELIZABETH,

01:39PM 19 "IT HAS BEEN OVER 2 YEARS SINCE YOU HAVE COMMUNICATED WITH

01:39PM 20 YOUR INVESTORS. I EMAILED YOU ONE WEEK AGO, FOLLOWING YOUR

01:39PM 21 INSTRUCTIONS TO DAVID HARRIS THAT INVESTORS SHOULD COMMUNICATE

01:39PM 22 DIRECTLY WITH THE COMPANY FOR AN UPDATE. WHEN I DIDN'T GET A

01:39PM 23 RESPONSE SIX DAYS LATER, I REACHED OUT TO YOUR CHAIRMAN. I DO

01:39PM 24 NOT UNDERSTAND YOUR EMAIL. DOES THIS MEAN THAT YOU CAN OR

01:39PM 25 WON'T COMMUNICATE WITH ME OR THE OTHER INVESTORS? I WAS LED TO

01:39PM 1 BELIEVE THAT THERE WOULD BE EVENTS HAPPENING BEFORE THE END OF
01:39PM 2 2012 THAT WOULD BE PUBLICLY COMMUNICATED. HAS THIS CHANGED?"

01:39PM 3 DO YOU SEE THAT?

01:39PM 4 A. YES.

01:39PM 5 Q. AND THEN MS. HOLMES EMAILS YOU BACK SAYING, "NO, ALAN, IT
01:39PM 6 HAS BEEN ABOUT THAT LONG SINCE YOU DECIDED TO START HARASSING
01:39PM 7 OUR CHAIRMAN, DESPITE THE FACT THAT WE COMMUNICATED MULTIPLE
01:39PM 8 TIMES THAT IF YOU DID SO, WE WOULD NO LONGER RESPOND TO YOUR
01:39PM 9 REQUESTS TO TALK WITH YOU IN LIGHT OF ALL OF OUR PAST
01:39PM 10 INTERACTIONS. TO THE COMPANY'S AMAZEMENT, YOU HAVE CONTINUED
01:39PM 11 TO DO SO ON AN ONGOING BASIS EVER SINCE WE HAD THOSE
01:40PM 12 CONVERSATIONS WITH YOU."

01:40PM 13 DO YOU SEE THAT?

01:40PM 14 A. YES.

01:40PM 15 Q. OKAY. THEN YOU EMAIL MS. MINNIG AGAIN AND YOU SAY, I
01:40PM 16 DON'T KNOW HOW TO REACT TO ELIZABETH'S EMAIL, AND YOU APOLOGIZE
01:40PM 17 IF YOU WERE OUT OF LINE.

01:40PM 18 AND YOU ASK HER, IS THERE A HAPPY MEDIUM THAT YOU OR DON
01:40PM 19 CAN SUGGEST?

01:40PM 20 AND SHE EMAILS YOU BACK SAYING, "HELLO ALAN,
01:40PM 21 "OUR OFFICE DOES NOT HAVE ANY FURTHER SUGGESTIONS TO OFFER
01:40PM 22 YOU."

01:40PM 23 DO YOU SEE THAT?

01:40PM 24 A. YES.

01:40PM 25 Q. OKAY. AND THEN AFTER MR. LUCAS DECLINED TO COMMUNICATE

01:40PM 1 WITH YOU, YOU TRIED CONTACTING OTHER THERANOS BOARD MEMBERS; IS

01:40PM 2 THAT RIGHT?

01:40PM 3 A. CAN YOU BE MORE SPECIFIC?

01:40PM 4 Q. SURE. YOU REACHED OUT TO BILL FRIST; IS THAT RIGHT?

01:40PM 5 A. THAT IS A BOARD MEMBER, NOT MEMBERS.

01:40PM 6 Q. SURE. DID YOU REACH OUT TO BILL FRIST?

01:41PM 7 A. YES, I DID.

01:41PM 8 Q. OKAY. AND HE'S A FORMER SENATOR; RIGHT?

01:41PM 9 A. YES.

01:41PM 10 Q. AND HE WAS THE FORMER MAJORITY LEADER IN THE U.S. SENATE;

01:41PM 11 IS THAT CORRECT?

01:41PM 12 A. THAT'S CORRECT.

01:41PM 13 Q. AND HE WAS A WELL RESPECTED SURGEON; IS THAT RIGHT?

01:41PM 14 A. CORRECT.

01:41PM 15 Q. AND YOU DIDN'T KNOW HIM PERSONALLY; RIGHT?

01:41PM 16 A. CORRECT.

01:41PM 17 Q. BUT HE WAS A FAMILY FRIEND; RIGHT?

01:41PM 18 A. CORRECT.

01:41PM 19 Q. HE WAS A FRIEND OF YOUR FATHER-IN-LAW'S; CORRECT?

01:41PM 20 A. CORRECT.

01:41PM 21 Q. AND YOUR FATHER-IN-LAW IS FROM TENNESSEE; CORRECT?

01:41PM 22 A. CORRECT.

01:41PM 23 Q. AND SENATOR FRIST REPRESENTED THE STATE OF TENNESSEE;

01:41PM 24 RIGHT?

01:41PM 25 A. YES.

01:41PM 1 Q. OKAY. AND YOU SUCCEEDED IN CONTACTING DR. FRIST; RIGHT?

01:41PM 2 A. YES.

01:41PM 3 Q. AND YOU ASKED HIM SOME QUESTIONS ABOUT THERANOS; RIGHT?

01:41PM 4 A. YES.

01:41PM 5 Q. BUT ULTIMATELY SENATOR FRIST STOPPED COMMUNICATING WITH

01:41PM 6 YOU ABOUT THERANOS; IS THAT RIGHT?

01:41PM 7 A. YES.

01:41PM 8 Q. SO WE'VE GONE THROUGH A LOT OF EMAILS. IT'S FAIR TO SAY

01:42PM 9 THAT YOU BECAME VERY FRUSTRATED WITH THE LEVEL OF COMMUNICATION

01:42PM 10 YOU WERE GETTING ABOUT DETAILS FROM THERANOS; RIGHT?

01:42PM 11 A. YES.

01:42PM 12 Q. YOU FELT YOU WERE NOT GETTING THE LEVEL OF COMMUNICATION

01:42PM 13 THAT YOU WANTED; RIGHT?

01:42PM 14 A. YES.

01:42PM 15 Q. OR THE INFORMATION THAT YOU SOUGHT; CORRECT?

01:42PM 16 A. CORRECT.

01:42PM 17 Q. BUT ULTIMATELY YOU DECIDED TO ULTIMATELY INCREASE YOUR

01:42PM 18 STAKE IN THERANOS IN 2013; RIGHT?

01:42PM 19 A. YES.

01:42PM 20 Q. NOW, YOU TESTIFIED THAT YOU LOOKED AT THE THERANOS WEBSITE

01:42PM 21 BEFORE YOUR INVESTMENT IN 2013; RIGHT?

01:42PM 22 A. YES.

01:42PM 23 Q. AND YOU BECAME AWARE THAT THERANOS WAS LAUNCHING ITS

01:42PM 24 SERVICES IN WALGREENS; RIGHT?

01:42PM 25 A. YES.

01:42PM 1 Q. AND YOU READ PUBLICITY AT THE TIME ABOUT THE WALGREENS
01:42PM 2 LAUNCH; CORRECT?

01:42PM 3 A. CORRECT.

01:42PM 4 Q. AND THEN THERE CAME A TIME IN DECEMBER OF 2013 WHERE YOU
01:42PM 5 BECAME AWARE OF THE OPPORTUNITY TO INCREASE YOUR STAKE IN
01:42PM 6 THERANOS; RIGHT?

01:42PM 7 A. YES.

01:42PM 8 Q. OKAY. SO LET'S TURN TO 16 -- 1363. 1363.

01:43PM 9 A. MY BINDER GOES FROM 1362 TO 1370.

01:43PM 10 Q. YEP. OKAY.
01:43PM 11 TAKE A LOOK AT 1362.

01:43PM 12 A. OKAY.

01:43PM 13 Q. OKAY. DO YOU HAVE THAT IN FRONT IT OF YOU?

01:44PM 14 A. YES.

01:44PM 15 Q. ALL RIGHT. AND IS THIS AN EMAIL CHAIN IN DECEMBER OF 2013
01:44PM 16 BETWEEN YOU AND MR. BALWANI ABOUT INVESTING IN THERANOS IN
01:44PM 17 2013?

01:44PM 18 A. YES.

01:44PM 19 MS. WALSH: YOUR HONOR, WE OFFER 1362.

01:44PM 20 MR. BOSTIC: NO OBJECTION.

01:44PM 21 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:44PM 22 (GOVERNMENT'S EXHIBIT 1362 WAS RECEIVED IN EVIDENCE.)

01:44PM 23 BY MS. WALSH:

01:44PM 24 Q. OKAY. AND IN THIS EMAIL IN THE MIDDLE OF PAGE 1
01:44PM 25 MR. BALWANI SAYS TO YOU, "ALAN.

01:44PM 1 "I CHECKED WITH OUR LEGAL ABOUT YOUR QUESTION ABOUT
01:44PM 2 INVESTING THROUGH A NEW ENTITY. THIS SHOULDN'T BE AN ISSUE."
01:44PM 3 RIGHT?
01:44PM 4 A. YES.
01:44PM 5 Q. AND YOU REPLY TO HIM, "SUNNY,
01:44PM 6 "WE WOULD LIKE TO MAKE THE FOLLOWING INVESTMENTS."
01:45PM 7 AND THEN YOU LIST THE DIFFERENT PEOPLE AND DIFFERENT
01:45PM 8 INVESTMENTS; CORRECT?
01:45PM 9 A. YES.
01:45PM 10 Q. WITH THE DIFFERENT AMOUNTS?
01:45PM 11 A. RIGHT.
01:45PM 12 Q. AND THAT WAS ON DECEMBER 24TH, 2013; RIGHT?
01:45PM 13 A. YES.
01:45PM 14 Q. AND THEN VERY CLOSE IN TIME TO THAT -- LET'S TURN TO
01:45PM 15 EXHIBIT 1371.
01:45PM 16 A. I DON'T HAVE A 1371.
01:45PM 17 THE COURT: 70?
01:45PM 18 MS. WALSH: ACTUALLY, 1371 IS IN EVIDENCE. IF WE
01:45PM 19 COULD JUST DOUBLE-CHECK THAT.
01:45PM 20 I THINK IT'S THE FIRST EIGHT PAGES.
01:45PM 21 THE CLERK: IT IS.
01:45PM 22 MS. WALSH: YEAH.
01:45PM 23 SO IF WE COULD PUBLISH THAT, YOUR HONOR?
01:45PM 24 THE COURT: YES.
01:45PM 25 BY MS. WALSH:

01:45PM 1 Q. IT WILL BE ON YOUR SCREEN, MR. EISENMAN.

01:45PM 2 A. YEAH.

01:45PM 3 Q. AND WHAT I WANT TO DIRECT YOUR ATTENTION TO PAGE 1.

01:46PM 4 THE BOTTOM OF PAGE 1, YOU EMAIL MR. BALWANI; RIGHT?

01:46PM 5 A. RIGHT.

01:46PM 6 Q. DO YOU SEE THAT?

01:46PM 7 A. YES.

01:46PM 8 Q. OKAY. THAT'S ON DECEMBER 29TH, 2013, AT 9:09 A.M.; RIGHT?

01:46PM 9 A. RIGHT.

01:46PM 10 Q. OKAY. AND YOU'RE ASKING, "DID YOU GET MY MESSAGE LAST

01:46PM 11 THURSDAY?"

01:46PM 12 YOU'VE BEEN OUT OF THE COUNTRY.

01:46PM 13 AND THEN YOU POSE THREE QUESTIONS TO HIM:

01:46PM 14 "WHAT IS THE SIZE OF THIS ROUND?"

01:46PM 15 RIGHT?

01:46PM 16 A. RIGHT.

01:46PM 17 Q. "ARE ANY DIRECTORS PARTICIPATING IN THIS ROUND?

01:46PM 18 AND "AM I CORRECT THAT THERE WILL BE ANOTHER ROUND OF

01:46PM 19 APPROXIMATELY 200 MILLION IN JANUARY AT A HIGHER PRICE?"

01:46PM 20 DO YOU SEE THAT?

01:46PM 21 A. YES.

01:46PM 22 Q. AND MR. BALWANI RESPONDS.

01:46PM 23 AND THIS IS BEFORE YOU ACTUALLY INVESTED IN 2013; RIGHT?

01:46PM 24 A. RIGHT.

01:46PM 25 Q. AND MR. BALWANI RESPONDS:

01:46PM 1

"ALAN.

01:46PM 2

"WE CAN'T ANSWER YOUR QUESTIONS ABOUT DIRECTORS, OTHER

01:47PM 3

INVESTORS AND CERTAINLY NOT ABOUT ANY FUTURE INVESTMENT ROUNDS

01:47PM 4

AND SPECULATE ON WHAT THOSE VALUATIONS MAY BE. THOSE MAY OR

01:47PM 5

MAY NOT HAPPEN."

01:47PM 6

DO YOU SEE THAT?

01:47PM 7

A. YES.

01:47PM 8

Q. AND THEN HE SAYS, "SECONDLY, MY PERSONAL ASSISTANTS ARE

01:47PM 9

NOT PRIVY TO CONFIDENTIAL FINANCIAL INFORMATION SO PLEASE DON'T

01:47PM 10

LEAVE MESSAGES WITH THEM ABOUT COMPANY'S FINANCIAL DETAILS AND

01:47PM 11

ACTIVITIES."

01:47PM 12

DO YOU SEE THAT?

01:47PM 13

A. YES.

01:47PM 14

Q. SO MR. BALWANI WAS SAYING TO YOU ON DECEMBER 29TH, I'M NOT

01:47PM 15

GOING TO ANSWER THE QUESTIONS THAT YOU POSED TO ME; RIGHT?

01:47PM 16

A. YES.

01:47PM 17

Q. OKAY. OKAY. SO YOU TESTIFIED THAT YOU HAD A PHONE CALL

01:48PM 18

WITH MR. BALWANI LEADING UP TO YOUR INVESTMENT IN 2013; IS THAT

01:48PM 19

RIGHT?

01:48PM 20

A. YES.

01:48PM 21

Q. AND THAT HE TOLD YOU ABOUT THE ACTIVITIES OF THERANOS; IS

01:48PM 22

THAT RIGHT? IS THAT WHAT YOU TESTIFIED TO?

01:48PM 23

A. I DON'T UNDERSTAND YOUR QUESTION.

01:48PM 24

Q. YOU TESTIFIED ABOUT A PHONE CALL THAT YOU HAD WITH

01:48PM 25

MR. BALWANI; CORRECT?

01:48PM 1 A. CORRECT.

01:48PM 2 Q. AND DURING THAT PHONE CALL, HE TOLD YOU ABOUT WHAT

01:48PM 3 THERANOS WAS DOING AT THE TIME; IS THAT RIGHT?

01:49PM 4 A. CAN YOU CLARIFY THAT? WHAT DO YOU MEAN WHAT --

01:49PM 5 Q. WELL, I'M ASKING, YOU TESTIFIED ABOUT THAT PHONE CALL;

01:49PM 6 RIGHT?

01:49PM 7 A. YES.

01:49PM 8 Q. AND YOU TESTIFIED THAT THE PHONE CALL WAS ABOUT THERANOS'S

01:49PM 9 ACTIVITIES AND TECHNOLOGY AND OTHER ITEMS ABOUT THERANOS DURING

01:49PM 10 THIS PHONE CALL? THAT'S WHAT YOU TESTIFIED TO?

01:49PM 11 A. OKAY.

01:49PM 12 Q. OKAY. BUT DURING THAT PHONE CALL, MR. EISENMAN, LEADING

01:49PM 13 UP TO YOUR INVESTMENT, THAT PHONE CALL WAS JUST ABOUT THE

01:49PM 14 ADMINISTRATIVE MATTERS OF GETTING YOUR INVESTMENT -- FILLING

01:49PM 15 OUT THE RIGHT FORMS AND THE RIGHT NUMBERS FOR THE DIFFERENT

01:49PM 16 ENTITIES THAT YOU WERE INVESTING THROUGH; ISN'T THAT RIGHT?

01:49PM 17 A. NO. THE PHONE CALL WAS MORE DETAILED THAN THAT.

01:49PM 18 Q. UH-HUH. OKAY.

01:49PM 19 AND YOU TESTIFIED THAT -- SO -- WITHDRAWN.

01:49PM 20 SO THE PHONE CALL WAS MORE DETAILED? IS THAT WHAT YOUR

01:49PM 21 TESTIMONY IS?

01:49PM 22 A. YES.

01:49PM 23 Q. AND YOU'VE TESTIFIED BEFORE THAT YOU TAKE DETAILED NOTES

01:50PM 24 OF PHONE CALLS; RIGHT?

01:50PM 25 A. YES.

01:50PM 1 Q. AND YOU TAKE NOTES OF PHONE CALLS TO KEEP TRACK OF WHAT
01:50PM 2 PEOPLE SAY; RIGHT?

01:50PM 3 A. RIGHT.

01:50PM 4 Q. AND IT'S IMPORTANT TO DO THAT TO MAKE SURE THAT YOU GET
01:50PM 5 THEIR WORDS DOWN RIGHT; CORRECT?

01:50PM 6 A. CORRECT.

01:50PM 7 Q. BECAUSE YOU'VE SAID SOMETIMES PEOPLE EXAGGERATE; RIGHT?

01:50PM 8 A. CORRECT.

01:50PM 9 Q. OKAY. SO I WANT YOU TO LOOK IN THE WHITE BINDER AT YOUR
01:50PM 10 NOTES OF ALL OF THE DIFFERENT PHONE CALLS THAT YOU'VE HAD WITH
01:50PM 11 THERANOS -- WITH MS. HOLMES AND MR. BALWANI.

01:50PM 12 I'M GOING TO GIVE YOU THE NUMBER IN A SECOND. OKAY?

01:50PM 13 MR. BOSTIC: OBJECTION. MISSTATES THE NATURE OF
01:50PM 14 EXHIBIT 14.

01:50PM 15 THE COURT: WELL, --

01:50PM 16 MS. WALSH: I CAN REPHRASE.

01:50PM 17 THE COURT: -- YOU'RE GOING TO ASK HIM TO DO
01:50PM 18 SOMETHING?

01:50PM 19 MS. WALSH: YEAH.

01:50PM 20 THE COURT: ALL RIGHT.

01:50PM 21 BY MS. WALSH:

01:50PM 22 Q. SO IN THE WHITE BINDER, MR. EISENMAN, PLEASE TURN TO
01:50PM 23 EXHIBIT 14.

01:50PM 24 A. OKAY.

01:50PM 25 Q. DO YOU HAVE IT?

01:51PM 1 A. YES.

01:51PM 2 Q. EXHIBIT 14 CONTAINS THE NOTES OF CONVERSATIONS THAT YOU'VE

01:51PM 3 HAD WITH VARIOUS PEOPLE ABOUT THERANOS OVER THE YEARS; CORRECT?

01:51PM 4 A. CORRECT.

01:51PM 5 Q. AND THIS CONTAINS ALL OF YOUR NOTES OF YOUR CONVERSATIONS;

01:51PM 6 RIGHT?

01:51PM 7 A. RIGHT.

01:51PM 8 Q. THERE ISN'T ANYTHING MISSING FROM IT; RIGHT?

01:51PM 9 A. RIGHT.

01:51PM 10 Q. BECAUSE YOU TURNED ALL OF THOSE OVER TO THE GOVERNMENT;

01:51PM 11 RIGHT?

01:51PM 12 A. RIGHT.

01:51PM 13 Q. OKAY. AND YOU TESTIFIED ABOUT WHAT YOU SAY NOW IS A

01:51PM 14 DETAILED CONVERSATION WITH MR. BALWANI AT THE END OF DECEMBER,

01:51PM 15 RIGHT BEFORE YOU INVESTED, THAT CONTAINED DETAILS ABOUT

01:51PM 16 THERANOS; IS THAT YOUR TESTIMONY?

01:51PM 17 A. MY TESTIMONY IS THAT WE -- THERE WERE SOME QUESTIONS

01:51PM 18 ASKED. I DON'T RECALL THAT IT WAS A DETAILED CONVERSATION, BUT

01:51PM 19 I DO RECALL THAT THERE WERE QUESTIONS ASKED BEFORE WE MADE THE

01:51PM 20 FINAL DECISION TO INVEST.

01:51PM 21 Q. DIDN'T YOU JUST TESTIFY THAT IT WAS A DETAILED

01:51PM 22 CONVERSATION? YOU JUST TESTIFIED TO THAT.

01:51PM 23 A. THEN I STAND CORRECTED.

01:52PM 24 Q. OKAY. SO IT WASN'T, IT WASN'T A CONVERSATION ABOUT THE

01:52PM 25 DETAILS OF THERANOS, WAS IT?

01:52PM 1 A. NO. NO.

01:52PM 2 YOU'RE TWISTING MY WORDS. I'M SORRY.

01:52PM 3 THERE WERE SOME ELEMENTS IN THAT CONVERSATION ABOUT THE
01:52PM 4 DETAILS OF THERANOS, BUT IT WASN'T A DETAILED CONVERSATION.

01:52PM 5 THERE WERE A FEW BULLETS POINTS THAT WERE DISCUSSED IN
01:52PM 6 THAT CONVERSATION.

01:52PM 7 Q. OKAY. WHAT WERE THOSE BULLET POINTS?

01:52PM 8 A. IF THE TECHNOLOGY WORKED AND CONFIRMING THAT THIS WAS A
01:52PM 9 ROUND THAT WAS GOING TO CLOSE, AND THERE WAS GOING TO BE A
01:52PM 10 LARGER ROUND THAT WAS GOING TO OCCUR RIGHT AFTER THIS ROUND
01:52PM 11 CLOSED, AN INSTITUTIONAL ROUND. THAT'S WHAT I WAS TOLD.

01:52PM 12 Q. OKAY. SO ON THE SECOND POINT, WHETHER THERE WAS GOING TO
01:52PM 13 BE A LARGER ROUND, IF YOU LOOK AT EXHIBIT 1371, WHICH IS THE
01:52PM 14 EMAIL THAT YOU HAVE WITH MR. BALWANI, HE SPECIFICALLY DECLINES
01:52PM 15 TO ANSWER THAT QUESTION; RIGHT?

01:52PM 16 A. THE -- ARE YOU TALKING ABOUT WHAT I LOOKED AT A MINUTE
01:52PM 17 AGO?

01:52PM 18 Q. YEAH, 13 --

01:53PM 19 A. OKAY. BUT THAT CONTRADICTED WHAT HE TOLD ME IN THAT
01:53PM 20 CONVERSATION BEFORE WE INVESTED.

01:53PM 21 Q. I SEE. SO YOUR TESTIMONY IS THAT YOU HAD A PHONE CALL
01:53PM 22 WITH MR. BALWANI WHERE YOU ASKED HIM, HOW BIG IS THE NEXT ROUND
01:53PM 23 GOING TO BE? IS THAT RIGHT? IS THAT YOUR TESTIMONY?

01:53PM 24 A. I DON'T THINK THAT WAS IN THE PHONE CALL. THAT WAS IN THE
01:53PM 25 EMAIL, HOW LARGE WAS THE NEXT ROUND. I WAS CONFIRMING -- I

01:53PM 1 DON'T REMEMBER THE SOURCE, BUT SOMEWHERE THERE WAS INFORMATION
01:53PM 2 THAT THE INSTITUTIONAL ROUND WAS \$200 MILLION DOLLARS, AND I
01:53PM 3 WAS TRYING TO CONFIRM THAT THAT WAS ACCURATE.

01:53PM 4 Q. RIGHT. AND IN THE EMAIL, HE WON'T CONFIRM THAT; RIGHT?

01:53PM 5 A. IN THE EMAIL, YOU'RE CORRECT, HE DID NOT CONFIRM WHAT HE
01:53PM 6 SAID TO ME IN THE CONVERSATION BEFORE I INVESTED IN DECEMBER.

01:53PM 7 Q. SO YOUR TESTIMONY IS THAT YOU HAD A PHONE CALL WITH
01:53PM 8 MR. BALWANI WHERE HE CONFIRMED THE SIZE OF THE ROUND? IS THAT
01:53PM 9 YOUR TESTIMONY? YOU REMEMBER THAT?

01:53PM 10 A. NO. MY TESTIMONY IS THAT HE CONFIRMED GETTING THE
01:54PM 11 INFORMATION THAT THIS WAS A FRIENDS AND FAMILY ROUND -- I'M
01:54PM 12 SORRY. LET ME START OVER.

01:54PM 13 HE CONFIRMED THAT THIS WAS A SMALLER FUND RAISING ROUND
01:54PM 14 FOR EXISTING SHAREHOLDERS, THEY CALLED IT FRIENDS AND FAMILY
01:54PM 15 ROUND, AND IT WAS GOING TO BE PRICED AT \$15 A SHARE; THEY WERE
01:54PM 16 GOING TO CLOSE THIS ROUND BY THE END OF THE YEAR; THEY
01:54PM 17 IMMEDIATELY HAD TEED UP OR LINED UP A MUCH LARGER INSTITUTIONAL
01:54PM 18 ROUND AT A HIGHER PRICE, AT \$17 A SHARE.

01:54PM 19 Q. SO YOUR TESTIMONY IS THAT'S WHAT MR. BALWANI TOLD YOU IN
01:54PM 20 DECEMBER 2013?

01:54PM 21 A. YES.

01:54PM 22 Q. IS THAT YOUR TESTIMONY?

01:54PM 23 A. YES.

01:54PM 24 Q. AND YOUR TESTIMONY IS THAT HE TOLD YOU THAT ON THE PHONE,
01:54PM 25 EVEN THOUGH HE'S REFUSING TO TELL YOU THAT IN THE EMAIL; IS

01:54PM 1 THAT RIGHT?

01:54PM 2 A. YES.

01:54PM 3 Q. OKAY. AND WHERE -- SO TURNING BACK TO YOUR NOTES, WHICH
01:54PM 4 IS EXHIBIT 14, THAT CONTAINS ALL OF YOUR NOTES OF ALL OF THE
01:54PM 5 CONVERSATIONS THAT YOU'VE HAD ABOUT THERANOS; RIGHT?

01:55PM 6 MR. BOSTIC: MISSTATES THE TESTIMONY AND THE
01:55PM 7 EXHIBIT.

01:55PM 8 MS. WALSH: WELL, LET ME ASK AGAIN.

01:55PM 9 Q. YOU SEE EXHIBIT 14; RIGHT?

01:55PM 10 A. YES.

01:55PM 11 Q. AND EXHIBIT 14 CONTAINS YOUR NOTES OF CONVERSATIONS THAT
01:55PM 12 YOU'VE HAD WITH OTHERS ABOUT THERANOS OVER THE YEARS, DOES IT
01:55PM 13 NOT?

01:55PM 14 A. IT DOES NOT CONTAIN EVERY BIT OF CONVERSATION THAT I HAD
01:55PM 15 WITH EVERY -- IN EVERY ONE OF THOSE SITUATIONS.

01:55PM 16 Q. BUT IT CONTAINS ALL OF YOUR NOTES OF CONVERSATIONS; RIGHT?

01:55PM 17 A. YES, IT CONTAINS ALL OF MY NOTES OF CONVERSATIONS, THAT IS
01:55PM 18 CORRECT.

01:55PM 19 Q. RIGHT. AND SO I WOULD LIKE YOU TO LOOK THROUGH EXHIBIT 14
01:55PM 20 FOR WHERE THERE IS A NOTE REFLECTING THE TELEPHONE CALL WITH
01:55PM 21 MR. BALWANI IN LATE DECEMBER 2013 THAT YOU JUST TESTIFIED
01:55PM 22 ABOUT.

01:56PM 23 (PAUSE IN PROCEEDINGS.)

01:56PM 24 THE WITNESS: IT'S APPARENTLY NOT WRITTEN DOWN IN MY
01:56PM 25 NOTES.

01:56PM 1 BY MS. WALSH:

01:56PM 2 Q. THERE IS NO NOTE REFLECTING THAT CONVERSATION; CORRECT?

01:56PM 3 A. NO. IT'S JUST A RECOLLECTION.

01:57PM 4 (PAUSE IN PROCEEDINGS.)

01:57PM 5 MS. WALSH: MAY I HAVE A MOMENT, YOUR HONOR?

01:57PM 6 THE COURT: YES.

01:57PM 7 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

01:58PM 8 MS. WALSH: SORRY, YOUR HONOR.

01:58PM 9 Q. OKAY. MR. EISENMAN, THE CONVERSATION THAT YOU JUST

01:58PM 10 TESTIFIED ABOUT IS NOT IN YOUR NOTES; RIGHT?

01:58PM 11 A. RIGHT.

01:58PM 12 Q. YOU'RE SAYING THAT IT'S JUST YOUR RECOLLECTION SITTING

01:58PM 13 HERE TODAY; CORRECT?

01:58PM 14 A. CORRECT.

01:58PM 15 Q. BUT YOU'VE SPOKEN ON MANY DIFFERENT OCCASIONS WITH THE

01:58PM 16 GOVERNMENT ABOUT YOUR RECOLLECTION OF THE CONVERSATIONS THAT

01:58PM 17 YOU HAD WITH MR. BALWANI IN DECEMBER 2013; ISN'T THAT RIGHT?

01:58PM 18 A. I DON'T RECALL THAT. IT'S VERY VAGUE.

01:58PM 19 Q. WELL, YOU'VE SPOKEN WITH THE GOVERNMENT ABOUT THIS CASE,

01:58PM 20 HAVEN'T YOU?

01:58PM 21 A. YES.

01:58PM 22 Q. AND IN THOSE MEETINGS YOU WERE ASKED QUESTIONS ABOUT YOUR

01:58PM 23 COMMUNICATIONS WITH MR. BALWANI; RIGHT?

01:58PM 24 A. PRESUMABLY SO. I DON'T RECALL.

01:58PM 25 Q. OKAY. LET ME DIRECT YOUR ATTENTION TO 28198.

01:59PM 1 DO YOU HAVE 28198?

01:59PM 2 A. YES.

01:59PM 3 Q. WHY DON'T YOU TURN TO PAGE 4 OF THAT EXHIBIT.

01:59PM 4 A. OKAY.

01:59PM 5 Q. AND 28198 REFLECTS A MEETING THAT YOU HAD WITH THE

01:59PM 6 GOVERNMENT; RIGHT?

01:59PM 7 A. OKAY.

01:59PM 8 Q. AND THAT WAS BACK IN 2018; RIGHT?

01:59PM 9 A. YES.

01:59PM 10 Q. IF YOU LOOK AT THE TOP RIGHT OF THE DOCUMENT?

01:59PM 11 A. YES.

01:59PM 12 Q. DO YOU SEE THAT DATE?

02:00PM 13 AND 2018 WAS MUCH CLOSER IN TIME TO THE EVENTS IN

02:00PM 14 QUESTION; CORRECT?

02:00PM 15 A. CORRECT.

02:00PM 16 Q. AND IF YOU LOOK AT THE TOP TWO PARAGRAPHS, JUST READ THE

02:00PM 17 TOP PARAGRAPH AND THEN THE FIRST SENTENCE OF THE FIRST FULL

02:00PM 18 PARAGRAPH ON THAT PAGE.

02:00PM 19 DO YOU SEE THAT?

02:00PM 20 A. YES.

02:00PM 21 Q. DOES THAT REFRESH YOUR RECOLLECTION THAT MR. BALWANI DID

02:00PM 22 NOT --

02:00PM 23 A. I'M STILL READING.

02:00PM 24 Q. SURE.

02:01PM 25 (PAUSE IN PROCEEDINGS.)

02:01PM 1 BY MS. WALSH:

02:01PM 2 Q. HAVE YOU FINISHED READING, MR. EISENMAN?

02:01PM 3 A. NOT YET.

02:01PM 4 (PAUSE IN PROCEEDINGS.)

02:01PM 5 THE WITNESS: I'VE FINISHED READING.

02:01PM 6 BY MS. WALSH:

02:01PM 7 Q. OKAY. SO I WANT TO FOCUS YOU ON THE FIRST SENTENCE OF THE
02:01PM 8 FIRST FULL PARAGRAPH ON PAGE 4.

02:01PM 9 A. OKAY.

02:01PM 10 Q. DOES THAT REFRESH YOUR RECOLLECTION THAT MR. BALWANI DID
02:01PM 11 NOT DESCRIBE THERANOS'S ACTIVITIES DURING HIS CALLS WITH YOU
02:01PM 12 REGARDING THE 2013 INVESTMENT?

02:01PM 13 A. WELL, IT CLARIFIES THAT HE DID NOT DISCUSS THE BUSINESS OF
02:01PM 14 THERANOS.

02:01PM 15 BUT I HAVE A RECOLLECTION THAT I WAS TOLD THAT THIS WAS A
02:02PM 16 FRIENDS AND FAMILY ROUND; IT WAS A \$15 ROUND; THAT THIS WAS AN
02:02PM 17 INCENTIVE TO INVEST AT THIS POINT IN TIME BECAUSE THERE WAS A
02:02PM 18 FOLLOW-UP ROUND IMMEDIATELY AFTER THIS CLOSED AT \$17.

02:02PM 19 Q. BUT MR. BALWANI DID NOT TALK ABOUT THERANOS'S ACTIVITIES
02:02PM 20 DURING THIS CONVERSATION; ISN'T THAT RIGHT?

02:02PM 21 A. DID NOT TALK -- NO, HE DID NOT TALK ABOUT THE ACTUAL
02:02PM 22 BUSINESS ACTIVITIES.

02:02PM 23 AND IT'S BEEN A LONG TIME AGO, BUT I SEEM TO RECALL THAT I
02:02PM 24 ASKED THE SAME QUESTION THAT I ASKED EVERY TIME. I TRIED, TO
02:02PM 25 EITHER ELIZABETH OR SUNNY, DOES THE TECHNOLOGY WORK?

02:02PM 1 AND MY RECOLLECTION IS, WHETHER IT WAS FROM THIS
02:02PM 2 CONVERSATION OR WHETHER IT WAS FROM A CONVERSATION THAT
02:02PM 3 MR. BALWANI HAD A WEEK EARLIER WITH PAT MENDENHALL THAT WE
02:02PM 4 TALKED ABOUT EARLIER IN COURT, THAT HE VERBALLY COMMUNICATED
02:02PM 5 THAT THE SCIENCE WAS PROVEN, THAT THE TECHNOLOGY WORKED, AND
02:02PM 6 THAT WAS A VERY IMPORTANT FACTOR THAT I HAD IN FRONT OF ME A
02:02PM 7 WEEK BEFORE, OR AT THAT POINT IN TIME BEFORE I DECIDED TO MAKE
02:02PM 8 MY INVESTMENT.

02:02PM 9 Q. RIGHT. AND I'M NOT ASKING ABOUT MR. MENDENHALL.

02:03PM 10 I'M ASKING ABOUT WHAT MR. BALWANI TOLD YOU, YOU PERSONALLY
02:03PM 11 IN THE CONVERSATION IN LATE DECEMBER 2013.

02:03PM 12 A. OKAY.

02:03PM 13 Q. AND I WANT TO BE REALLY CLEAR ABOUT THIS: YOU DON'T HAVE
02:03PM 14 A SPECIFIC RECOLLECTION THAT HE TALKED TO YOU ABOUT THE
02:03PM 15 THERANOS TECHNOLOGY OR THE THERANOS BUSINESS IN THAT TELEPHONE
02:03PM 16 CALL; IS THAT RIGHT?

02:03PM 17 A. IT IS CORRECT THAT I DON'T HAVE A SPECIFIC RECOLLECTION.

02:03PM 18 I KNOW WHEN I DO BUSINESS --

02:03PM 19 Q. I'M JUST ASKING ABOUT YOUR RECOLLECTION, NOT THE WAY YOU
02:03PM 20 DO BUSINESS.

02:03PM 21 SO IF THAT'S A "NO, I DON'T HAVE A SPECIFIC RECOLLECTION,"
02:03PM 22 THAT WILL SUFFICE.

02:03PM 23 A. OKAY.

02:03PM 24 MR. BOSTIC: YOUR HONOR, I ASK THAT THE WITNESS BE
02:03PM 25 ALLOWED TO COMPLETE HIS ANSWER.

02:03PM 1 THE COURT: HAVE YOU COMPLETED YOUR ANSWER, SIR?

02:03PM 2 THE WITNESS: NO.

02:03PM 3 THE COURT: OKAY. YOU CAN COMPLETE IT.

02:03PM 4 THE WITNESS: OKAY. EVERY OPPORTUNITY THAT I HAVE,
02:03PM 5 ESPECIALLY BEFORE I INVEST MONEY, I ASK AS MANY QUESTIONS AS I
02:03PM 6 CAN THAT I THINK WILL BE ANSWERED.

02:03PM 7 AND I DON'T HAVE A CLEAR RECOLLECTION IF I ASKED
02:04PM 8 MR. BALWANI IF THE TECHNOLOGY WORKED.

02:04PM 9 I THINK I -- I THINK I DID, BUT I DON'T HAVE A CLEAR
02:04PM 10 RECOLLECTION.

02:04PM 11 BUT I DID BASICALLY HAVE MR. BALWANI TELLING OUR GROUP,
02:04PM 12 THROUGH PAT MENDENHALL, IN AN EMAIL ONE WEEK EARLIER, THAT THE
02:04PM 13 SCIENCE WORKED, THAT IT WAS, IT WAS -- THERE WAS NO DOUBT THAT
02:04PM 14 THE TECHNOLOGY WORKED.

02:04PM 15 AND THAT WAS INFORMATION THAT CAME DIRECTLY TO ME, AND
02:04PM 16 THAT WAS ONE OF THE KEY FACTORS IN MY MAKING A DECISION TO
02:04PM 17 INVEST MORE MONEY.

02:04PM 18 BY MS. WALSH:

02:04PM 19 Q. AND I JUST WANT TO MAKE SURE THAT MY QUESTION WAS
02:04PM 20 ANSWERED.

02:04PM 21 DO YOU HAVE A SPECIFIC RECOLLECTION OF MR. BALWANI TELLING
02:04PM 22 YOU IN THAT PHONE CALL IN DECEMBER OF 2013 ANYTHING ABOUT
02:04PM 23 THERANOS TECHNOLOGY OR THERANOS ACTIVITIES?

02:04PM 24 A. I DO NOT HAVE A SPECIFIC RECOLLECTION.

02:04PM 25 Q. OKAY. LET'S TURN TO EXHIBIT 12999.

02:05PM 1 A. OKAY.

02:05PM 2 Q. OKAY. THIS IS AN EMAIL BETWEEN YOU AND MS. HOLMES AND

02:05PM 3 MR. BALWANI IN JANUARY 2015; CORRECT?

02:05PM 4 A. CORRECT.

02:05PM 5 Q. AND IT'S ABOUT INFORMATION YOU HAD RECEIVED THROUGH A

02:05PM 6 GOOGLE ALERT ABOUT THERANOS; RIGHT?

02:05PM 7 A. RIGHT.

02:05PM 8 Q. AND YOU'RE FOLLOWING UP WITH THEM TO ASK QUESTIONS ABOUT

02:05PM 9 IT; CORRECT?

02:05PM 10 A. CORRECT.

02:05PM 11 MS. WALSH: YOUR HONOR, WE OFFER 12999.

02:05PM 12 MR. BOSTIC: 801, YOUR HONOR.

02:06PM 13 (PAUSE IN PROCEEDINGS.)

02:06PM 14 THE COURT: MS. WALSH.

02:06PM 15 MS. WALSH: YES, YOUR HONOR.

02:06PM 16 IT'S COMING IN, AGAIN, FOR MR. EISENMAN'S STATE OF MIND.

02:06PM 17 HE'S CONTINUING TO FOLLOW UP WITH MR. BALWANI AND MS. HOLMES

02:06PM 18 ABOUT THE STATUS OF THERANOS.

02:06PM 19 AND THE GOVERNMENT, I THINK, OFFERED ANOTHER EMAIL OUTSIDE

02:06PM 20 OF THE TIME PERIOD FOR THE SAME PURPOSE, SO THIS IS IN THE SAME

02:06PM 21 CATEGORY.

02:06PM 22 THE COURT: YOU'RE ASKING THAT THE ENTIRE DOCUMENT,

02:06PM 23 INCLUDING THE PAGE 8769?

02:06PM 24 MS. WALSH: LET ME JUST TAKE A LOOK.

02:06PM 25 THE COURT: IT'S THE LAST PAGE OF THIS.

02:06PM 1 MS. WALSH: I WAS, YOUR HONOR.

02:07PM 2 BUT IF THAT'S -- IF THE COURT WOULD PREFER, WE CAN REDACT

02:07PM 3 THAT.

02:07PM 4 THE COURT: NO, THAT'S FINE. I JUST WANTED TO KNOW

02:07PM 5 HOW MUCH OF THIS.

02:07PM 6 ALL RIGHT. I'LL ADMIT IT, AND IT MAY BE PUBLISHED.

02:07PM 7 (DEFENDANT'S EXHIBIT 12999 WAS RECEIVED IN EVIDENCE.)

02:07PM 8 BY MS. WALSH:

02:07PM 9 Q. OKAY. LET'S LOOK AT PAGE 1.

02:07PM 10 ACTUALLY, LET'S LOOK AT -- IT'S NOT -- THERE ARE NO PAGE

02:07PM 11 NUMBERS, SO LET'S LOOK AT THE PAGE ENDING WITH BATES STAMP

02:07PM 12 8768.

02:07PM 13 OKAY. MR. EISENMAN, THIS IS AN EMAIL FROM YOU ON

02:07PM 14 JANUARY 21ST, 2015. IT'S TO MS. HOLMES AND MR. BALWANI

02:07PM 15 REGARDING A GOOGLE ALERT THAT YOU GOT; CORRECT?

02:07PM 16 A. CORRECT.

02:07PM 17 Q. OKAY. AND YOU SAY, "ELIZABETH AND SUNNY,

02:07PM 18 "THIS IS THE SECOND GOOGLE ALERT I HAVE RECEIVED RECENTLY

02:07PM 19 THAT CLAIMS THAT THERANOS COULD BECOME OBSOLETE. CAN WE HAVE A

02:07PM 20 BRIEF CATCH UP CALL THIS WEEK? PLEASE DON'T IGNORE THIS

02:08PM 21 REQUEST."

02:08PM 22 AND MR. BALWANI RESPONDS, "ALAN.

02:08PM 23 "I THINK THESE EMAILS ARE BEYOND RIDICULOUS. YES,

02:08PM 24 THERANOS LIKE ANY OTHER COMPANY, CAN BECOME OBSOLETE. THIS

02:08PM 25 DOES NOT WARRANT INVESTOR CALLS AND UPDATES BECAUSE SOMEONE

02:08PM 1 WROTE AN ARTICLE THAT THERANOS CAN BECOME OBSOLETE.

02:08PM 2 "YOU CONTINUE TO BOMBARD US WITH EMAILS AND PHONE CALLS
02:08PM 3 EVEN THOUGH JUST 12 SHORT MONTHS AGO I SPOKE WITH YOU IN DETAIL
02:08PM 4 THAT YOU WILL NOT GET UPDATES, THAT YOU SHOULDN'T INVEST AND
02:08PM 5 THAT MANAGEMENT WILL NOT BE SPENDING ANY TIME WITH YOU
02:08PM 6 PROVIDING YOU UPDATES AND RESPONDING TO YOUR EMAILS ABOUT
02:08PM 7 BUSINESS OPERATIONS, STRATEGY AND DETAILS.

02:08PM 8 "YOU WILL GET UPDATES ALONG WITH OTHER INVESTORS."

02:08PM 9 DO YOU SEE THAT?

02:08PM 10 A. YES.

02:08PM 11 Q. AND YOU RESPOND "SUNNY,

02:08PM 12 "WHEN WE SPOKE SEVERAL MONTHS AGO, YOU SAID THAT WE COULD
02:08PM 13 HAVE A SHORT QUARTERLY CALL. I DON'T THINK THIS IS AN
02:08PM 14 UNREASONABLE REQUEST."

02:08PM 15 AND THEN MR. BALWANI RESPONDS, "ALAN.

02:08PM 16 "NO ONE FROM THIS COMPANY HAS EVER COMMITTED TO A SHORT
02:09PM 17 QUARTERLY CALL WITH YOU OR ANY OTHER INVESTOR SELECTIVELY. I
02:09PM 18 WAS VERY EXPLICITLY DISCOURAGING YOU FROM INVESTING IN JANUARY
02:09PM 19 OF 2014 AND NO INFORMATION HAS BEEN DISSEMINATED."

02:09PM 20 DO YOU SEE THAT?

02:09PM 21 A. YES.

02:09PM 22 Q. WE CAN TAKE THAT DOWN.

02:09PM 23 OKAY. LET'S TURN NOW TO 3530.

02:09PM 24 A. OKAY.

02:09PM 25 Q. OKAY. AND THIS SHOULD BE 3550.

02:09PM 1 IS THAT WHAT YOU HAVE, MR. EISENMAN?

02:09PM 2 A. THE AMENDED RESTATED --

02:09PM 3 Q. YEAH.

02:09PM 4 A. IT SAYS 3530 IN MY BOOK.

02:10PM 5 Q. OKAY. OKAY. SO THIS IS A -- LET ME FIRST DIRECT YOUR

02:10PM 6 ATTENTION TO PAGE 1 WHICH SAYS, AMENDED AND RESTATED SERIES C-1

02:10PM 7 PREFERRED STOCK PURCHASE AGREEMENT, INITIAL CLOSING DATE

02:10PM 8 JULY 1ST, 2010.

02:10PM 9 DO YOU SEE THAT?

02:10PM 10 A. YES.

02:10PM 11 Q. AND THEN I'M GOING TO DIRECT YOUR ATTENTION --

02:10PM 12 MR. BOSTIC: I APOLOGIZE. THIS IS NOT IN EVIDENCE,

02:10PM 13 YOUR HONOR.

02:10PM 14 THE CLERK: IT IS IN EVIDENCE.

02:10PM 15 MS. WALSH: IT IS IN EVIDENCE?

02:10PM 16 THE CLERK: 3530 IS IN EVIDENCE.

02:10PM 17 MR. BOSTIC: MY APOLOGIES.

02:10PM 18 THE COURT: THANK YOU.

02:10PM 19 BY MS. WALSH:

02:10PM 20 Q. OKAY. SO, MR. EISENMAN, LET ME DIRECT YOUR ATTENTION TO

02:10PM 21 PAGE 29 OF THIS DOCUMENT.

02:10PM 22 THAT'S YOUR SIGNATURE; RIGHT?

02:10PM 23 A. YES.

02:10PM 24 Q. AND IT'S DATED 12/30/13; RIGHT?

02:11PM 25 A. RIGHT.

02:11PM 1 Q. AND THEN PAGE 11 OF THE DOCUMENT, SECTION 4.4, THIS
02:11PM 2 STATES, "THE SPECULATIVE NATURE OF THE AGREEMENT."
02:11PM 3 DO YOU SEE THAT?
02:11PM 4 A. YES.
02:11PM 5 Q. AND I KNOW YOU TESTIFIED BEFORE THAT YOU DISAGREED WITH
02:11PM 6 THIS.
02:11PM 7 A. YES.
02:11PM 8 Q. BUT YOU SIGNED THIS AGREEMENT; RIGHT?
02:11PM 9 A. YES.
02:11PM 10 Q. AND IT CONTAINS THIS PROVISION; CORRECT?
02:11PM 11 A. CORRECT.
02:11PM 12 Q. AND WHAT THE PROVISION SAYS IS, "SUCH INVESTOR UNDERSTANDS
02:11PM 13 AND ACKNOWLEDGES THAT THE COMPANY HAS A LIMITED FINANCIAL AND
02:11PM 14 OPERATING HISTORY AND THAT AN INVESTMENT IN THE COMPANY IS
02:11PM 15 HIGHLY SPECULATIVE AND INVOLVES SUBSTANTIAL RISKS."
02:11PM 16 CORRECT? THAT'S WHAT IT SAYS; RIGHT?
02:11PM 17 A. THAT'S WHAT IT SAYS.
02:11PM 18 Q. AND THEN LET'S GO TO PAGE 42 OF THE EXHIBIT.
02:12PM 19 IT SHOWS THE NUMBER OF SHARES YOU'RE PURCHASING; IS THAT
02:12PM 20 RIGHT?
02:12PM 21 A. RIGHT.
02:12PM 22 Q. AND THAT'S 6,666; IS THAT CORRECT?
02:12PM 23 A. CORRECT.
02:12PM 24 Q. AND FOR A TOTAL DOLLAR AMOUNT OF 99,990; CORRECT?
02:12PM 25 A. CORRECT.

02:12PM 1 Q. AND THE PURCHASE PRICE WAS \$15 PER SHARE; RIGHT?

02:12PM 2 A. RIGHT.

02:12PM 3 Q. SO THE TOTAL AMOUNT THAT YOU INVESTED IN THERANOS AFTER

02:12PM 4 2013 WAS \$1,234,233; CORRECT?

02:12PM 5 A. CORRECT.

02:12PM 6 Q. AND YOU HAD 408,880 SHARES; CORRECT?

02:12PM 7 A. I DON'T RECALL THE NUMBER OF SHARES.

02:12PM 8 Q. BUT IF YOU, IF YOU ADD YOUR 2006 INVESTMENT WITH THE 2013,

02:12PM 9 DOES THAT SOUND ABOUT RIGHT?

02:12PM 10 A. IT SOUNDS REASONABLE.

02:12PM 11 Q. YEAH. OKAY. LET'S GO TO 14103.

02:13PM 12 A. OKAY.

02:13PM 13 Q. OKAY. ALL RIGHT. 14103 IS IN EVIDENCE.

02:13PM 14 AND I WANT TO DRAW YOUR ATTENTION TO MS. HOLMES'S -- THE

02:13PM 15 TOP EMAIL, HER LAST PARAGRAPH ABOUT THE FRUSTRATION WITH THE

02:13PM 16 LEVEL OF INTERACTION.

02:13PM 17 DO YOU SEE THAT?

02:13PM 18 A. YES.

02:13PM 19 Q. AND SHE WAS STRONGLY ENCOURAGING YOU TO RECONSIDER THE

02:13PM 20 OPPORTUNITY TO SELL YOUR SHARES; RIGHT?

02:13PM 21 A. RIGHT.

02:13PM 22 Q. AND SHE WAS SAYING THAT WE CAN PROVIDE YOU WITH A GREATER

02:14PM 23 THAN FIVE TIMES RETURN ON YOUR INVESTMENT; CORRECT?

02:14PM 24 A. THAT'S WHAT SHE PROPOSED.

02:14PM 25 Q. OKAY. AND THAT WAS IN 2010; RIGHT?

02:14PM 1 A. RIGHT. BUT AS YOU KNOW, THIS NEVER CAME TO FRUITION.

02:14PM 2 Q. OKAY. LET'S GO TO 2468.

02:14PM 3 2468 IS IN EVIDENCE.

02:14PM 4 AND IF WE LOOK AT PAGE 2.

02:14PM 5 THIS IS IN 2015, MARCH OF 2015.

02:14PM 6 DO YOU SEE THAT?

02:14PM 7 A. YES.

02:14PM 8 Q. OKAY. AND YOU'RE DESCRIBING AN OFFER FROM BROADMARK TO
02:14PM 9 PURCHASE THERANOS STOCK; IS THAT RIGHT?

02:14PM 10 A. NO, IT WASN'T AN OFFER.

02:14PM 11 Q. WELL, AN OPPORTUNITY TO SELL THERANOS STOCK; IS THAT
02:14PM 12 RIGHT?

02:14PM 13 A. IT WAS A POTENTIAL OPPORTUNITY. THERE WERE OPPORTUNITIES
02:15PM 14 THAT CAME ALONG THAT WEREN'T LEGITIMATE.

02:15PM 15 Q. OKAY. THIS WAS, AS YOU STATE IN THE EMAIL, YOU STATE, "WE
02:15PM 16 HAVE BEEN INFORMED OF AN OPPORTUNITY TO SELL THERANOS STOCK."
02:15PM 17 IS THAT WHAT YOU SAY IN THE EMAIL?

02:15PM 18 A. IT WAS A POTENTIAL OPPORTUNITY. I DIDN'T KNOW WHETHER IT
02:15PM 19 WAS LEGITIMATE OR NOT.

02:15PM 20 Q. DO YOU SEE IN THE EMAIL, "WE HAVE BEEN INFORMED OF AN
02:15PM 21 OPPORTUNITY TO SELL THERANOS STOCK"?

02:15PM 22 A. YES.

02:15PM 23 Q. ARE THOSE YOUR WORDS?

02:15PM 24 A. YES.

02:15PM 25 Q. OKAY. AND MR. BALWANI RESPONDS SAYING, "THE LAST

02:15PM 1 TRANSACTION WAS AT \$17 PER SHARE AS YOU ALREADY KNOW"; RIGHT?

02:15PM 2 A. I DIDN'T KNOW. THAT WAS INFORMATION THAT WAS PUT OUT

02:15PM 3 THERE, BUT NEVER CONFIRMED.

02:15PM 4 Q. WELL, I THOUGHT YOU JUST SAID THAT YOU HAD A PHONE CALL

02:15PM 5 WITH MR. BALWANI WHERE HE TOLD YOU THAT? WASN'T THAT YOUR

02:15PM 6 TESTIMONY EARLIER?

02:15PM 7 A. THE TESTIMONY IS WHEN WE INVESTED AT 15, THAT THEY WERE

02:15PM 8 GOING TO DO ANOTHER LARGER INSTITUTIONAL ROUND AT 17. BUT I

02:16PM 9 NEVER GOT CONFIRMATION ABOUT THE SIZE OF THE ROUND.

02:16PM 10 THERE MIGHT HAVE BEEN A LATER EMAIL. THIS MIGHT BE THE

02:16PM 11 ONLY CONFIRMATION THAT THERE WAS A \$17 A SHARE ROUND.

02:16PM 12 Q. OKAY. PUTTING ASIDE THAT, AT \$17 A SHARE, YOU WOULD HAVE

02:16PM 13 MADE MONEY ON YOUR INVESTMENT; CORRECT?

02:16PM 14 A. WELL, THE KEY WORD IS "WOULD."

02:16PM 15 THERE WAS NEVER --

02:16PM 16 Q. IF YOU SOLD YOUR SHARES --

02:16PM 17 A. CAN I FINISH?

02:16PM 18 THERE WAS NEVER A LEGITIMATE OPPORTUNITY FROM THE COMPANY

02:16PM 19 OR FROM A THIRD PARTY TO BUY MY STOCK. I PURSUED MANY

02:16PM 20 OPPORTUNITIES, BUT NONE OF THEM WERE LEGITIMATE OPPORTUNITIES.

02:16PM 21 Q. WELL, MS. HOLMES EMAILED YOU ABOUT AN OPPORTUNITY TO SELL

02:16PM 22 YOUR STOCK AT FIVE TIMES THE VALUE; RIGHT? WE SAW THAT IN

02:16PM 23 2010? WE JUST SAW THAT EMAIL; CORRECT?

02:16PM 24 A. AND WHEN I FOLLOWED UP TO PURSUE THAT OPPORTUNITY, SHE

02:17PM 25 STOPPED COMMUNICATING. SO THAT OPPORTUNITY WAS EITHER NEVER

02:17PM 1 LEGITIMATE, OR IF IT MAY HAVE BEEN LEGITIMATE IN THE EARLY
02:17PM 2 STAGES, SHE DROPPED THE BALL.
02:17PM 3 Q. AND LET'S TURN NOW TO 13150.
02:17PM 4 THIS IS AN EMAIL BETWEEN YOU AND CHRIS BOIES; RIGHT?
02:17PM 5 A. YES.
02:17PM 6 Q. AND IT'S ON AUGUST 18TH, 2015; CORRECT?
02:17PM 7 A. CORRECT.
02:17PM 8 Q. AND THE SUBJECT IS THERANOS FOLLOW UP FROM OUR
02:17PM 9 CONVERSATION TODAY; RIGHT?
02:17PM 10 A. RIGHT.
02:17PM 11 Q. AND CHRIS BOIES WAS THE SON OF DAVID BOIES; RIGHT?
02:17PM 12 A. YES.
02:17PM 13 Q. WHO WAS THE LAWYER FOR THERANOS; RIGHT?
02:17PM 14 A. DAVID BOIES WAS THE LAWYER FOR THERANOS. FOR THERANOS.
02:17PM 15 CHRIS APPARENTLY WAS DOING SOME THERANOS WORK BECAUSE HE'S
02:17PM 16 THE ONE THAT APPROACHED ME.
02:17PM 17 Q. OKAY. AND IN THIS EMAIL HE SAYS -- I'M SORRY.
02:18PM 18 YOU SAY, "CHRIS,
02:18PM 19 "I CIRCLE BACK WITH SOME OF THE" --
02:18PM 20 I'M SORRY, YOUR HONOR. THIS IS NOT IN EVIDENCE.
02:18PM 21 I OFFER 13150.
02:18PM 22 MR. BOSTIC: NO OBJECTION.
02:18PM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
02:18PM 24 (DEFENDANT'S EXHIBIT 13150 WAS RECEIVED IN EVIDENCE.)
02:18PM 25 MS. WALSH: SORRY. NOW I CAN READ THE EMAIL.

02:18PM 1 Q. "CHRIS,

02:18PM 2 "I CIRCLED BACK WITH SOME OF THE EARLY STAGE CO-INVESTORS

02:18PM 3 TODAY."

02:18PM 4 DO YOU SEE THAT?

02:18PM 5 A. YES.

02:18PM 6 Q. "FIRST OF ALL, THEY THOUGHT THERE WAS A POST MONEY ROUND

02:18PM 7 AT \$19? IS THIS TRUE? THEY ALSO FELT THAT CURRENT VALUATION

02:18PM 8 IS PROBABLY WELL IN EXCESS OF THE \$15 OFFERED BY THE COMPANY."

02:18PM 9 DO YOU SEE THAT?

02:18PM 10 A. YES.

02:18PM 11 Q. OKAY. AND SO THIS IS AN EMAIL ABOUT A POTENTIAL BUYOUT;

02:18PM 12 RIGHT?

02:18PM 13 A. YES.

02:18PM 14 Q. AND IT'S A BUYOUT AT \$15 PER SHARE; RIGHT?

02:18PM 15 A. POTENTIAL.

02:18PM 16 Q. AND THAT WOULD HAVE BEEN, TO YOU, BASED ON THE VALUATION

02:18PM 17 OF THE COMPANY AT THE TIME, WORTH ABOUT \$25 MILLION; IS THAT

02:19PM 18 RIGHT?

02:19PM 19 A. POTENTIAL. IT'S NOT A DONE DEAL UNTIL BOTH PARTIES AGREE,

02:19PM 20 AND THIS IS ANOTHER OFFER THAT CHRIS BOIES DID NOT FOLLOW

02:19PM 21 THROUGH.

02:19PM 22 Q. BUT IF IT HAD COME TO FRUITION, IT WOULD HAVE BEEN

02:19PM 23 \$25 MILLION FOR YOU; RIGHT?

02:19PM 24 A. IF IT HAD. THAT'S SPECULATIVE. THIS WAS ANOTHER OFFER AS

02:19PM 25 THE FIRST OFFER AT THE GREATER THAN FIVE TIMES THAT WAS PUT OUT

02:19PM 1 THERE, BUT THERE WAS NO FOLLOW THROUGH.

02:19PM 2 I FOLLOWED THROUGH. I WAS PURSUING THIS OFFER AND IT WENT

02:19PM 3 AWAY.

02:19PM 4 CHRIS BOIES STOPPED COMMUNICATING WITH ME WHEN I WAS

02:19PM 5 TRYING TO PURSUE THIS OFFER.

02:19PM 6 Q. SO IT'S CLEAR THAT A SALE DIDN'T HAPPEN.

02:19PM 7 MY QUESTION IS JUST ABOUT THE MATH.

02:19PM 8 IF YOU HAD SOLD YOUR STOCK PURSUANT TO THIS OFFER, YOU

02:19PM 9 WOULD HAVE MADE ABOUT \$25 MILLION; IS THAT RIGHT? JUST THE

02:20PM 10 MATH? IS THAT RIGHT?

02:20PM 11 A. I DON'T SEE WHERE THAT IS RELEVANT. I'M SORRY.

02:20PM 12 Q. IS THE MATH RIGHT?

02:20PM 13 THE COURT: CAN YOU ANSWER HER QUESTION?

02:20PM 14 THE WITNESS: OKAY.

02:20PM 15 IF THIS OFFER WAS LEGITIMATE, AND THEY FOLLOWED THROUGH ON

02:20PM 16 THIS OFFER, THAT IS THE POTENTIAL.

02:20PM 17 BUT MY TESTIMONY IS THAT THIS WAS ANOTHER ILLEGITIMATE

02:20PM 18 OFFER. THEY DID NOT FOLLOW THROUGH WITH THIS OFFER, AND I

02:20PM 19 DON'T KNOW WHY BECAUSE I'VE PURSUED THE OFFER AND CHRIS BOIES

02:20PM 20 DROPPED THE BALL. HE STOPPED COMMUNICATING.

02:20PM 21 BY MS. WALSH:

02:20PM 22 Q. OKAY. SO PUT ASIDE LEGITIMATE, NOT LEGITIMATE, I'M JUST

02:20PM 23 FOCUSED ON THE MATH.

02:20PM 24 IF YOU HAD ACCEPTED THIS OFFER AND THE DEAL HAD GONE

02:20PM 25 THROUGH, YOU WOULD HAVE MADE \$25 MILLION BASED ON THE VALUATION

02:20PM 1 OF THERANOS AT THE TIME. IS THAT MATH CORRECT?

02:20PM 2 A. IT'S HARD TO ANSWER BECAUSE IT WAS NOT AN OFFER. IT WAS

02:20PM 3 NOT A LEGITIMATE OFFER.

02:20PM 4 Q. IS THE MATH CORRECT?

02:20PM 5 A. IF THAT WAS A LEGITIMATE OFFER AND I HAD ACCEPTED IT, THE

02:21PM 6 MATH IS CORRECT.

02:21PM 7 Q. SO THE ANSWER IS YES, THE MATH IS CORRECT? IS THAT YOUR

02:21PM 8 ANSWER?

02:21PM 9 A. YES.

02:21PM 10 Q. LET'S TURN TO 13191.

02:21PM 11 DO YOU SEE THAT?

02:21PM 12 A. YES.

02:21PM 13 Q. THIS IS AN EMAIL BETWEEN YOU AND SOME INDIVIDUALS AT A

02:21PM 14 PLACE CALLED SHARES POST.

02:21PM 15 DO YOU SEE THAT?

02:21PM 16 A. YES.

02:21PM 17 Q. AND IT'S IN SEPTEMBER 2015; CORRECT?

02:21PM 18 A. YES.

02:21PM 19 Q. AND THIS EMAIL RELATED TO YOU PURSUING OR TRYING TO SELL

02:22PM 20 YOUR STOCK; IS THAT RIGHT?

02:22PM 21 A. YES.

02:22PM 22 Q. OKAY.

02:22PM 23 YOUR HONOR, WE OFFER 13191.

02:22PM 24 MR. BOSTIC: 801, YOUR HONOR.

02:22PM 25 (PAUSE IN PROCEEDINGS.)

02:22PM 1 MS. WALSH: MR. EISENMAN HAS TESTIFIED THAT HIS
02:22PM 2 INVESTMENT IS NOW WORTHLESS, AND THIS GOES TO ANOTHER INSTANCE
02:22PM 3 OF HIM BEING GIVEN AN OPPORTUNITY TO SELL AND HIM NOT SELLING.
02:22PM 4 MR. BOSTIC: THAT SOUNDS LIKE IT'S BEING OFFERED FOR
02:22PM 5 THE TRUTH, YOUR HONOR.
02:22PM 6 THE COURT: IS IT?
02:22PM 7 MS. WALSH: IT GOES TO HIS STATE OF MIND.
02:22PM 8 THE COURT: SO IS IT OFFERED FOR THE TRUTH OF THE
02:22PM 9 MATTER ASSERTED?
02:22PM 10 MS. WALSH: NO.
02:22PM 11 THE COURT: ALL RIGHT.
02:22PM 12 MR. BOSTIC: YOUR HONOR, THE WITNESS'S STATE OF MIND
02:22PM 13 POST-INVESTMENT IS NOT AN ISSUE IN THIS CASE.
02:22PM 14 MS. WALSH: WELL, IT --
02:22PM 15 THE COURT: WELL, THAT WAS MY NEXT QUESTION.
02:22PM 16 GO AHEAD.
02:22PM 17 MS. WALSH: WELL, IT IS AN ISSUE IF MR. EISENMAN
02:22PM 18 TESTIFIED ABOUT WHAT HAPPENED WITH HIS STOCK AT THE END OF THE
02:23PM 19 DAY OR WHAT WAS THE VALUE OF HIS SHARES AT THE END OF THE DAY.
02:23PM 20 THE COURT: I'M NOT CERTAIN I CAPTURE THAT.
02:23PM 21 THIS IS POST-INVESTMENT?
02:23PM 22 MS. WALSH: IT IS POST-INVESTMENT.
02:23PM 23 THE OTHER THING I WOULD JUST POINT OUT IS THAT THE TOP
02:23PM 24 EMAIL IS A SERIES OF QUESTIONS. SO THEY'RE NOT FACTUAL
02:23PM 25 ASSERTIONS, THEY'RE JUST QUESTIONS BEING POSED.

02:23PM 1 THE COURT: WELL, IT ALSO CREATES SOME 403 TYPE
02:23PM 2 ISSUES, DOES IT? IT SEEMS IT MIGHT.

02:23PM 3 MS. WALSH: IT IS PROBATIVE OF MR. EISENMAN'S
02:24PM 4 OPPORTUNITIES TO SELL HIS STOCK.

02:24PM 5 I DON'T THINK THERE ARE ANY ASSERTIONS IN HERE THAT GO TO
02:24PM 6 THE TRUTH. THERE'S NO ASSERTION THAT IS BEING MADE. THERE ARE
02:24PM 7 QUESTIONS BEING POSED.

02:24PM 8 THE COURT: ALL RIGHT. THERE HAVE BEEN DISCUSSIONS
02:24PM 9 ABOUT THIS.

02:24PM 10 I'LL PERMIT THIS TO BE ADMITTED, BUT NOT FOR THE TRUTH OF
02:24PM 11 THE MATTER ASSERTED, LADIES AND GENTLEMEN, NOT FOR THE TRUTH OF
02:24PM 12 ANY OF THE ITEMS, INCLUDING NUMBERS AND THOSE THINGS THAT ARE
02:24PM 13 ASSERTED IN THESE DOCUMENTS.

02:24PM 14 THIS JUST GOES TO THE WITNESS'S STATE OF MIND IN REGARDS
02:24PM 15 TO HIS FORMER TESTIMONY ABOUT HIS THOUGHTS ABOUT VALUATION AND
02:24PM 16 SELLING AND FOR THAT LIMITED PURPOSE.

02:24PM 17 IT'S ADMITTED, AND IT MAY BE PUBLISHED.

02:24PM 18 MS. WALSH: THANK YOU.

02:24PM 19 (DEFENDANT'S EXHIBIT 13191 WAS RECEIVED IN EVIDENCE.)

02:24PM 20 BY MS. WALSH:

02:24PM 21 Q. OKAY. IF WE CAN GO TO THE EMAIL FIRST IN TIME,
02:24PM 22 SEPTEMBER 3RD, 2015.

02:24PM 23 MR. EISENMAN, YOU WRITE TO A FELLOW NAMED BRYSON TOMBRIDGE
02:24PM 24 AT SHARES POST; RIGHT?

02:24PM 25 A. YES.

02:25PM

1

Q. AND WHAT IS SHARES POST?

02:25PM

2

A. IT IS A MARKET MAKER THAT TRIES TO MATCH BUYERS AND

02:25PM

3

SELLERS WITH NONPUBLIC STOCKS, NONPUBLIC SECURITIES.

02:25PM

4

Q. OKAY. AND WHAT YOU SAY TO MR. TOMBRIDGE IS, "BRYSON,

02:25PM

5

"I WANTED TO MAKE SURE YOU RECEIVED ALL DOCUMENTATION TO

02:25PM

6

LIST MY THERANOS FOR SALE. COULD YOU UPDATE ME ON THE CURRENT

02:25PM

7

MARKET... WHERE STOCK HAS BEEN TRADING, BOTH GROSS SALES PRICE

02:25PM

8

AND NET OF COMMISSIONS, AND ALSO HOW MUCH STOCK IS IN FRONT OF

02:25PM

9

ME AND AT WHAT PRICE."

02:25PM

10

DO YOU SEE THAT?

02:25PM

11

A. YES.

02:25PM

12

Q. AND THEN MR. TOMBRIDGE WRITES BACK SAYING "HI ALAN,

02:25PM

13

"YES, WE RECEIVED YOUR DOCUMENTATION."

02:25PM

14

AND HE SAYS SOME MORE THINGS.

02:25PM

15

"WE COMPLETED A TRANSACTION AT THE PRICE OF 14.75.

02:25PM

16

"IN TERMS OF THE MARKET, WE HAVE A LARGE BLOCK OF SELLERS

02:26PM

17

AT \$19 PER SHARE."

02:26PM

18

AND THEN YOU WRITE, "HI BRYSON,

02:26PM

19

"THIS CONFLICTS WITH MY CONVERSATION WITH GENO. I THOUGHT

02:26PM

20

HE SAID THAT YOUR FIRM HAD DONE SEVERAL TRANSACTIONS IN

02:26PM

21

THERANOS STOCK, AND CURRENT TRANSACTIONS WERE SELLING IN THE

02:26PM

22

\$17 TO \$19 PRICE RANGE BEFORE COMMISSION. HE ALSO SAID THAT

02:26PM

23

THE COMPANY HAD EXERCISED ITS FIRST RIGHT OF REFUSAL ON SOME OF

02:26PM

24

THE TRANSACTIONS AND PURCHASED STOCK FOR AS MUCH AS \$17.40. I

02:26PM

25

NEED CURRENT AND ACCURATE INFORMATION, SO I CAN SET MY PRICES

02:26PM 1 AND QUANTITIES. CAN YOU CONFIRM WITH ZENO AND RESPOND TODAY?"

02:26PM 2 I THINK IT'S ACTUALLY GENO.

02:26PM 3 AND GENO RESPONDS SAYING "HI ALAN,

02:26PM 4 "SORRY, I HAVE JUST RETURNED FROM A WEEK LONG VACATION AND

02:26PM 5 I ACTUALLY WAS UNPLUGGED FOR ONCE. NO RUSH AS WE HAVE SEVERAL

02:26PM 6 LARGE BLOCKS TO FILL IN THE NEXT FEW MONTHS BEFORE WE GET TO

02:26PM 7 YOUR PRICE LEVEL."

02:26PM 8 DO YOU SEE THAT?

02:26PM 9 A. YES.

02:26PM 10 Q. AND YOU RESPOND, "GENO,

02:26PM 11 "I NEED ACCURATE INFORMATION. PLEASE LET ME KNOW THE

02:27PM 12 TOTAL DOLLAR AMOUNT OF THERANOS YOUR FIRM HAS CROSSED SINCE

02:27PM 13 INCEPTION."

02:27PM 14 AND BY "CROSS" YOU MEAN?

02:27PM 15 A. MATCHING BUYERS AND SELLERS.

02:27PM 16 Q. BY "CROSS" YOU MEAN MATCHING BUYERS AND SELLERS?

02:27PM 17 A. YES.

02:27PM 18 Q. "WHAT ARE THE DOLLAR AMOUNTS OF LARGER TRADE? WHAT ARE

02:27PM 19 THE GROSS AND NET PRICES OF THE MOST RECENT TRADES? WHAT NET

02:27PM 20 PRICE CAN I EXPECT FOR MY STOCK IF I WANT TO SELL 100,000, A

02:27PM 21 MILLION, OR 10 MILLION? IS THE MARKET LIQUID ENOUGH TO ABSORB

02:27PM 22 \$10 MILLION WITHOUT LOWERING MY PRICE?"

02:27PM 23 DO YOU SEE THAT?

02:27PM 24 A. YES.

02:27PM 25 Q. AND WE CAN TAKE THAT DOWN.

02:27PM 1 OKAY. SO YOU'VE TESTIFIED TODAY ABOUT INFORMATION THAT

02:28PM 2 YOU WANTED TO GET FROM THERANOS THAT YOU DID NOT GET. IS THAT

02:28PM 3 FAIR?

02:28PM 4 A. YES.

02:28PM 5 Q. AND THAT'S INFORMATION THAT YOU ASKED FROM MS. HOLMES AND

02:28PM 6 MR. BALWANI; RIGHT?

02:28PM 7 A. YES.

02:28PM 8 Q. AND SO LET'S TALK ABOUT OTHER INFORMATION THAT MR. BALWANI

02:28PM 9 MAY NOT HAVE GIVEN YOU. OKAY?

02:28PM 10 A. OKAY.

02:28PM 11 Q. DID MR. BALWANI TELL YOU THAT HE GUARANTEED A LINE OF

02:28PM 12 CREDIT FOR THERANOS FOR \$10 MILLION?

02:28PM 13 A. NO.

02:28PM 14 Q. DID HE TELL YOU THAT THAT WAS IN 2009 DURING THE HEIGHT OF

02:28PM 15 THE FINANCIAL CRISIS?

02:28PM 16 A. NO.

02:28PM 17 Q. DID HE TELL YOU THAT HE USED HIS PERSONAL MONEY TO DO

02:28PM 18 THAT?

02:28PM 19 A. NO.

02:28PM 20 Q. AND DID HE TELL YOU THAT HE DIDN'T CHARGE INTEREST ON

02:28PM 21 HAVING HIS MONEY TIED UP IN THAT WAY?

02:28PM 22 A. NO.

02:28PM 23 Q. OKAY. DID MR. BALWANI TELL YOU THAT HE MADE NO MORE THAN

02:28PM 24 \$99,000 A YEAR AS A CEO AT A COMPANY THAT WAS VALUED AT

02:28PM 25 \$9 BILLION?

02:28PM 1 A. NO.

02:29PM 2 Q. AND DID HE TELL YOU THAT HE NEVER ASKED FOR ANY OTHER

02:29PM 3 COMPENSATION FROM THE COMPANY?

02:29PM 4 A. NO.

02:29PM 5 Q. DID HE TELL YOU THAT WALGREENS MADE A COMMITMENT TO

02:29PM 6 THERANOS AT THE END OF DECEMBER OF 2013 TO DO A NATIONAL

02:29PM 7 ROLLOUT OF THERANOS TECHNOLOGY?

02:29PM 8 A. I'M SORRY. DID HE TELL ME?

02:29PM 9 Q. DID MR. BALWANI TELL YOU THAT?

02:29PM 10 A. I DON'T THINK I GOT THAT INFORMATION FROM MR. BALWANI.

02:29PM 11 Q. OKAY. AND DID MR. BALWANI TELL YOU THAT WALGREENS AGREED

02:29PM 12 TO PAY, IN DECEMBER OF 2013, \$75 MILLION TO THERANOS? DID HE

02:29PM 13 TELL YOU THAT?

02:29PM 14 A. NO.

02:29PM 15 MS. WALSH: MAY I HAVE A MOMENT, YOUR HONOR?

02:29PM 16 THE COURT: YES.

02:29PM 17 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

02:29PM 18 MS. WALSH: I DON'T HAVE ANY FURTHER QUESTIONS.

02:29PM 19 THE COURT: WILL YOU HAVE REDIRECT?

02:29PM 20 MR. BOSTIC: I WILL, YOUR HONOR.

02:30PM 21 THE COURT: I WONDER IF WE SHOULD TAKE OUR BREAK NOW

02:30PM 22 BEFORE YOUR REDIRECT, OR DO YOU THINK WE SHOULD GO FORWARD WITH

02:30PM 23 THAT?

02:30PM 24 MR. BOSTIC: I THINK NOW MAY BE A GOOD TIME FOR A

02:30PM 25 BREAK, YOUR HONOR.

02:30PM 1 THE COURT: WELL, LET'S DO THAT NOW, LADIES AND
02:30PM 2 GENTLEMEN. LET'S TAKE A BREAK NOW. WE'LL TAKE ABOUT 25 OR
02:30PM 3 30 MINUTES, AND THEN WE'LL RESUME.

02:30PM 4 (RECESS FROM 2:30 P.M. UNTIL 3:01 P.M.)

03:07PM 5 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD.
03:07PM 6 SORRY FOR THE DELAY.

03:07PM 7 THE PARTIES WHO WERE PREVIOUSLY PRESENT ARE PRESENT ONCE
03:07PM 8 AGAIN.

03:07PM 9 MR. BOSTIC, YOU HAVE QUESTIONS?

03:07PM 10 MR. BOSTIC: YES, YOUR HONOR. THANK YOU.

03:07PM 11 **REDIRECT EXAMINATION**

03:07PM 12 BY MR. BOSTIC:

03:07PM 13 Q. GOOD AFTERNOON, MR. EISENMAN.

03:07PM 14 A. GOOD AFTERNOON.

03:07PM 15 Q. I'D LIKE TO START ON THE TOPIC OF THE EFFORTS THAT YOU
03:07PM 16 MADE TO EXPLORE POTENTIAL SALES OF YOUR THERANOS SHARES IN
03:07PM 17 2015.

03:07PM 18 DO YOU HAVE THAT IN MIND?

03:07PM 19 A. YES.

03:07PM 20 Q. LET ME START BY ASKING, WHY WERE YOU INTERESTED IN
03:08PM 21 POTENTIAL OPPORTUNITIES TO SELL YOUR THERANOS SHARES IN 2015?

03:08PM 22 A. BECAUSE I HAD AN OVERWEIGHTED POSITION IF THE MARKET WAS
03:08PM 23 AS IT WAS PRESENTED IN FINANCIAL PRESS, AND PARTIALLY A
03:08PM 24 FRUSTRATION BECAUSE I HAD NO TANGIBLE FINANCIAL INFORMATION TO
03:08PM 25 BASE THE VALUE OF MY SHARES.

03:08PM 1 Q. SO DID YOUR LACK OF INFORMATION FROM MR. BALWANI AND
03:08PM 2 MS. HOLMES CONTRIBUTE TO YOUR INTEREST IN POTENTIALLY PARTING
03:08PM 3 WAYS WITH THE COMPANY?

03:08PM 4 A. YES, IT DID.

03:08PM 5 Q. JUST SO THE RECORD IS CLEAR, AT ANY POINT AFTER YOU
03:08PM 6 INVESTED IN 2013, WAS THERE A COMPLETE OFFER TO SELL YOUR
03:08PM 7 SHARES THAT YOU COULD HAVE ACCEPTED?

03:08PM 8 A. NO.

03:08PM 9 Q. IF THERE HAD BEEN AN OFFER TO SELL YOUR SHARES THAT YOU
03:08PM 10 COULD HAVE ACCEPTED, DID YOU HAVE THE INFORMATION THAT YOU
03:09PM 11 WOULD HAVE NEEDED TO EVALUATE THAT OFFER?

03:09PM 12 A. NO, I DIDN'T.

03:09PM 13 Q. AND WHAT DO YOU MEAN BY THAT?

03:09PM 14 A. I HAD NO EVEN BASIC FINANCIAL INFORMATION ABOUT REVENUES
03:09PM 15 THAT THE COMPANY HAD DONE HISTORICALLY, WHAT THEY WERE
03:09PM 16 CURRENTLY DOING. THERE WAS BASICALLY NO -- DESPITE MY MANY
03:09PM 17 ATTEMPTS, THERE WAS NO RELEVANT OR MATERIAL INFORMATION THAT I
03:09PM 18 COULD OBTAIN FROM ANY SOURCE.

03:09PM 19 Q. LET'S TALK SOME MORE ABOUT THOSE ATTEMPTS THAT YOU MADE TO
03:09PM 20 GET INFORMATION, AND LET'S GO BACK TO 2010.

03:09PM 21 DO YOU RECALL MS. WALSH SHOWING YOU SOME EMAILS DURING THE
03:09PM 22 SUMMER OF 2010 WHERE YOU WERE CONTACTING MS. HOLMES AND
03:09PM 23 MR. BALWANI TRYING TO GET MORE INFORMATION ABOUT THE COMPANY?

03:09PM 24 A. YES.

03:09PM 25 Q. AND WERE THOSE EFFORTS, GENERALLY SPEAKING, SUCCESSFUL OR

03:09PM 1 UNSUCCESSFUL IN GETTING INFORMATION?

03:09PM 2 A. UNSUCCESSFUL.

03:09PM 3 Q. AT THAT TIME IN MID-2010, HOW MUCH OF YOUR MONEY WAS

03:10PM 4 INVESTED IN THE COMPANY?

03:10PM 5 A. ARE YOU TALKING ABOUT DOLLARS?

03:10PM 6 Q. DOLLARS, YES.

03:10PM 7 A. IN 2010? OF THE FAMILY INVESTMENTS, MY PERSONAL

03:10PM 8 INVESTMENT WAS APPROXIMATELY \$450,000.

03:10PM 9 Q. AND OF THE TOTAL AMOUNT, INCLUDING INDIVIDUALS ASSOCIATED

03:10PM 10 WITH YOU, WHAT WAS THE TOTAL THAT YOU HAD INVESTED?

03:10PM 11 A. THE TOTAL AMOUNT FOR MY IMMEDIATE FAMILY WAS APPROXIMATELY

03:10PM 12 A MILLION -- BETWEEN 1 MILLION 1 AND 1 MILLION 2.

03:10PM 13 Q. YOU TESTIFIED EARLIER ABOUT QUARTERLY CALLS THAT YOU HAD

03:10PM 14 PREVIOUSLY HAD WITH MS. HOLMES.

03:10PM 15 DO YOU RECALL THAT?

03:10PM 16 A. YES.

03:10PM 17 Q. AND HOW LONG WERE THOSE QUARTERLY CALLS?

03:10PM 18 A. HOW LONG WAS THE DURATION OF EACH CALL?

03:10PM 19 Q. ON AVERAGE, YES.

03:10PM 20 A. ON AVERAGE, 5 TO 15 MINUTES.

03:10PM 21 Q. SO ARE WE TALKING ABOUT APPROXIMATELY ONE HOUR PER YEAR OF

03:10PM 22 PHONE CONVERSATIONS BETWEEN YOU AND MS. HOLMES DURING THAT TIME

03:10PM 23 PERIOD?

03:10PM 24 A. YES, YES.

03:11PM 25 Q. AND AT THE TIME THAT YOU WERE MAKING THESE REQUESTS FOR

03:11PM 1 INFORMATION, DID YOU THINK IT WAS REASONABLE THAT YOUR MILLION
03:11PM 2 DOLLAR INVESTMENT IN THE COMPANY WOULD ENTITLE YOU TO AN HOUR A
03:11PM 3 YEAR OF THE CEO'S TIME?

03:11PM 4 A. YES.

03:11PM 5 Q. DO YOU RECALL SEEING IN SOME OF THE COMMUNICATIONS FROM
03:11PM 6 THERANOS THAT IF INFORMATION WAS PROVIDED TO OTHER
03:11PM 7 SHAREHOLDERS, YOU WOULD RECEIVE THAT INFORMATION AS WELL?

03:11PM 8 A. YES.

03:11PM 9 Q. DO YOU HAVE ANY KNOWLEDGE OF OTHER SHAREHOLDERS OR
03:11PM 10 POTENTIAL SHAREHOLDERS OF THERANOS RECEIVING MORE DETAILED
03:11PM 11 INFORMATION THAN WHAT YOU WERE GIVEN?

03:11PM 12 A. WE HAD SOME COMMUNICATION THROUGH DAVID HARRIS THAT THERE
03:11PM 13 WERE OTHER SHAREHOLDERS THAT, THAT WERE PRIVY TO FINANCIAL
03:11PM 14 INFORMATION.

03:11PM 15 Q. IS THAT ONE OF THE REASONS WHY YOU WERE PRESSING THERANOS
03:11PM 16 TO GET THOSE DISCLOSURES YOURSELF?

03:11PM 17 A. THAT WAS ONE OF MANY REASONS.

03:12PM 18 Q. AT ANY POINT WHEN YOU WERE ASKING FOR MORE INFORMATION
03:12PM 19 FROM THERANOS, WAS YOUR GOAL TO GET INFORMATION THAT WAS NOT
03:12PM 20 GOING TO BE SHARED WITH OTHER INVESTORS?

03:12PM 21 A. I'M SORRY. COULD YOU RESTATE THE QUESTION?

03:12PM 22 Q. LET ME ASK IT A DIFFERENT WAY.

03:12PM 23 AT ANY POINT WAS YOUR GOAL TO GET AN ADVANTAGE, AS
03:12PM 24 COMPARED TO OTHER INVESTORS, BY GETTING INFORMATION THAT THEY
03:12PM 25 DID NOT HAVE?

03:12PM 1 A. NO.

03:12PM 2 MS. WALSH: OBJECTION. LEADING.

03:12PM 3 THE COURT: OVERRULED. THE ANSWER CAN REMAIN.

03:12PM 4 BY MR. BOSTIC:

03:12PM 5 Q. AND YOUR ANSWER, MR. EISENMAN?

03:12PM 6 A. NO.

03:12PM 7 MR. BOSTIC: YOUR HONOR, EXHIBIT 3387 WAS PREVIOUSLY

03:12PM 8 ADMITTED.

03:12PM 9 MAY WE PUBLISH?

03:12PM 10 THE COURT: YES.

03:12PM 11 BY MR. BOSTIC:

03:12PM 12 Q. LET'S START WITH PAGE 143.

03:12PM 13 MR. EISENMAN, DO YOU SEE ON THE SCREEN A DOCUMENT THAT IS

03:12PM 14 LABELLED CONFIDENTIAL INVESTMENT MATERIALS FOR DANIEL MOSLEY?

03:12PM 15 A. YES.

03:12PM 16 Q. AND DO YOU KNOW THE NAME DANIEL MOSLEY?

03:12PM 17 A. NO.

03:12PM 18 Q. DO YOU SEE THE THERANOS LOGO AT THE TOP?

03:13PM 19 A. YES.

03:13PM 20 Q. LET'S LOOK AT PAGE 277 NEXT.

03:13PM 21 AND DO YOU SEE NOW THAT WE'RE LOOKING AT A PAGE LABELLED

03:13PM 22 CONFIDENTIAL THERANOS BRIEFING?

03:13PM 23 A. YES.

03:13PM 24 Q. LET'S LOOK AT THE FOLLOWING PAGE, 278.

03:13PM 25 DO YOU SEE HERE THERE'S THE BEGINNING OF A DOCUMENT THAT

03:13PM 1 IS LABELLED THERANOS CONFIDENTIAL OVERVIEW?

03:13PM 2 A. YES.

03:13PM 3 Q. AT ANY POINT DID YOU RECEIVE THIS DOCUMENT OR A DOCUMENT

03:13PM 4 LIKE IT FROM MR. BALWANI OR MS. HOLMES?

03:13PM 5 A. NO.

03:13PM 6 Q. DID ANYONE AT THERANOS EVER SEND YOU THE THERANOS

03:13PM 7 CONFIDENTIAL OVERVIEW?

03:13PM 8 A. NO.

03:13PM 9 Q. IN YOUR COMMUNICATIONS WITH MR. BALWANI AND MS. HOLMES,

03:13PM 10 WAS ONE THING THAT YOU WERE ASKING FOR CONCRETE FINANCIAL

03:13PM 11 INFORMATION ABOUT THE COMPANY?

03:13PM 12 A. YES.

03:13PM 13 Q. LET'S LOOK IN THIS SAME EXHIBIT AT PAGE 513.

03:13PM 14 DO YOU SEE ON THE SCREEN IN FRONT OF YOU IN THE MATERIALS

03:14PM 15 PROVIDED TO DANIEL MOSLEY SOMETHING LABELED THERANOS

03:14PM 16 CONFIDENTIAL PRO FORMA STATEMENT OF CASH FLOW?

03:14PM 17 A. YES.

03:14PM 18 Q. WERE YOU EVER PROVIDED THIS INFORMATION BY THERANOS?

03:14PM 19 A. NO (LAUGHTER) .

03:14PM 20 Q. WERE YOU EVER PROVIDED ANY SIMILAR FINANCIAL INFORMATION

03:14PM 21 IN RESPONSE TO YOUR REQUEST?

03:14PM 22 A. NONE WHATSOEVER.

03:14PM 23 Q. LET'S LOOK AT THE FOLLOWING PAGE.

03:14PM 24 DO YOU SEE ON THE SCREEN ADDITIONAL INFORMATION FOR THE

03:14PM 25 BALANCE SHEET FOR THERANOS FOR THE PERIOD ENDING

03:14PM 1 JULY 14TH, 2014?

03:14PM 2 A. YES.

03:14PM 3 Q. DID YOU EVER RECEIVE ANYTHING LIKE THIS IN RESPONSE TO

03:14PM 4 YOUR REQUEST FROM MR. BALWANI AND MS. HOLMES?

03:14PM 5 A. NO.

03:14PM 6 Q. THE ANSWER, SIR?

03:14PM 7 A. NO.

03:14PM 8 Q. AND FINALLY, LET'S LOOK AT THE NEXT PAGE.

03:14PM 9 AND THE PAGE AFTER THAT.

03:14PM 10 OKAY. WE CAN SET THAT ASIDE.

03:14PM 11 DO YOU RECALL LOOKING WITH MS. WALSH AT AN EMAIL WHERE

03:15PM 12 MS. HOLMES INFORMED YOU THAT THERANOS WAS AN EARLY STAGE LIFE

03:15PM 13 SCIENCES COMPANY?

03:15PM 14 A. YES.

03:15PM 15 Q. AND DO YOU RECALL HER SAYING IN THAT EMAIL THAT BY ITS

03:15PM 16 VERY NATURE, THE COMPANY CARRIED IMMENSE RISK AND

03:15PM 17 UNPREDICTABILITY AS YOU KNOW AS A SAVVY INVESTOR?

03:15PM 18 A. I RECALL.

03:15PM 19 Q. DO YOU RECALL THAT THAT EMAIL WAS FROM JUNE OF 2010?

03:15PM 20 A. YES.

03:15PM 21 Q. AND MS. HOLMES SAID IN THAT EMAIL, "THIS MAY NOT CHANGE

03:15PM 22 FOR YEARS TO COME."

03:15PM 23 DO YOU REMEMBER THAT?

03:15PM 24 A. YES.

03:15PM 25 Q. FOLLOWING JUNE 2010, DID YOUR UNDERSTANDING OF THE RISK

03:15PM 1 INHERENT IN THE INVESTMENT CHANGE BASED ON WHAT MR. BALWANI AND
03:15PM 2 MS. HOLMES SAID?

03:15PM 3 A. I'M SORRY. COULD YOU RESTATE THE QUESTION?

03:15PM 4 Q. SURE. I CAN TRY TO ASK IT BETTER.

03:15PM 5 A. OKAY.

03:15PM 6 Q. MS. HOLMES SAID IN JUNE OF 2010 THAT THERANOS WAS AN EARLY
03:16PM 7 STAGE LIFE SCIENCES STARTUP AND, BY ITS VERY NATURE, CARRIES
03:16PM 8 IMMENSE RISK. "THIS MAY NOT CHANGE FOR YEARS TO COME."

03:16PM 9 IN YOUR VIEW, HAD THAT CHANGED BY THE TIME THAT YOU MADE
03:16PM 10 THE INVESTMENT IN 2013?

03:16PM 11 A. YES.

03:16PM 12 Q. AND WHAT MADE YOU UNDERSTAND THAT THIS HAD CHANGED AND IT
03:16PM 13 WAS NO LONGER THE CASE IN 2013?

03:16PM 14 A. RELYING ON SEVERAL PIECES OF INFORMATION, PRIMARILY THE
03:16PM 15 PHONE CONVERSATION A WEEK BEFORE THE ROUND CLOSED WITH
03:16PM 16 PAT MENDENHALL THAT HE SHARED WITH ALL OF US THAT THE RISK HAD
03:16PM 17 TAKEN OUT, THE SCIENCE HAD PROVEN, IT WAS AN ACCEPTABLE
03:16PM 18 SCIENCE, AND THIS ROUND WAS NOT REALLY FOR THE COMPANY TO
03:16PM 19 DEVELOP. THE COMPANY HAD ALREADY DEVELOPED. THEY WERE RAISING
03:16PM 20 MONEY TO GROW THE COMPANY.

03:16PM 21 Q. LEADING UP TO YOUR INVESTMENT IN 2013, YOU HAD
03:16PM 22 CONVERSATIONS WITH MR. BALWANI AND MS. HOLMES; CORRECT?

03:16PM 23 A. CORRECT.

03:16PM 24 Q. IN ANY OF THOSE CONVERSATIONS PRIOR TO YOUR 2013
03:17PM 25 INVESTMENT, AROUND THAT TIME PERIOD, DID EITHER OF THEM SAY

03:17PM 1 ANYTHING LIKE WHAT MS. HOLMES HAD SAID IN 2010, THAT THE
03:17PM 2 INVESTMENT CARRIED IMMENSE RISK?
03:17PM 3 A. COULD YOU RESTATE THE QUESTION?
03:17PM 4 Q. SURE. WE SAW THE STATEMENT FROM 2010 WHEN MS. HOLMES TOLD
03:17PM 5 YOU THE INVESTMENT CARRIED IMMENSE RISK.
03:17PM 6 A. HIGH RISK, YES.
03:17PM 7 Q. DID EITHER MR. BALWANI OR MS. HOLMES SAY THAT TO YOU
03:17PM 8 LEADING UP TO YOUR 2013 INVESTMENT?
03:17PM 9 A. OKAY. IN, IN PHONE CONVERSATION OR EMAIL OR EITHER?
03:17PM 10 Q. EITHER.
03:17PM 11 A. OKAY. I DON'T RECALL.
03:17PM 12 Q. IF THEY HAD TOLD YOU, LEADING UP TO YOUR 2013 INVESTMENT,
03:17PM 13 THAT THERE WAS IMMENSE RISK INVOLVED, WOULD THAT HAVE CHANGED
03:17PM 14 YOUR UNDERSTANDING ABOUT THE 2013 INVESTMENT?
03:17PM 15 A. YES.
03:17PM 16 MS. WALSH: OBJECTION.
03:17PM 17 THE COURT: OVERRULED.
03:17PM 18 THE WITNESS: YES.
03:17PM 19 BY MR. BOSTIC:
03:17PM 20 Q. YOU TESTIFIED EARLIER THAT YOU HAVE YEARS OF EXPERIENCE
03:18PM 21 INVESTING IN PRIVATE AND PUBLIC COMPANIES; CORRECT?
03:18PM 22 A. THAT'S CORRECT.
03:18PM 23 Q. WHEN IT COMES TO INVESTING IN A PRIVATE COMPANY, DOES THE
03:18PM 24 COMPANY ITSELF HAVE A SAY OVER WHO IS ABLE TO PURCHASE SHARES
03:18PM 25 IN THE COMPANY?

03:18PM 1 A. IN A PRIVATE COMPANY?

03:18PM 2 Q. YES.

03:18PM 3 A. DID THEY DETERMINE WHO IS ALLOWED TO BUY STOCK?

03:18PM 4 Q. YES.

03:18PM 5 A. YES.

03:18PM 6 Q. SO WHEN YOU INVESTED IN 2013, COULD THERANOS HAVE SAID,

03:18PM 7 NO, THANK YOU, WE DON'T WANT YOUR INVESTMENT?

03:18PM 8 A. YES.

03:18PM 9 Q. THAT WAS YOUR UNDERSTANDING AT THE TIME?

03:18PM 10 A. YES.

03:18PM 11 Q. IN 2013 WHEN YOU WERE DISCUSSING THAT INVESTMENT WITH

03:18PM 12 MR. BALWANI AND MS. HOLMES, DID THEY AT ANY POINT REFUSE THE

03:18PM 13 ADDITIONAL MONEY THAT YOU WERE OFFERING?

03:18PM 14 A. NO, QUITE TO THE CONTRARY.

03:18PM 15 MR. BALWANI WAS UNUSUALLY CORDIAL AND FRIENDLY AND

03:18PM 16 RESPONSIVE TO A RETURN CALL, WHICH WAS VERY DIFFERENT THAN OUR

03:18PM 17 HISTORY FOR THE PRIOR FEW YEARS.

03:18PM 18 Q. DO YOU RECALL SEEING, DURING CROSS-EXAMINATION, SOME

03:19PM 19 EMAILS THAT MR. BALWANI SENT YOU LATER WHERE HE CLAIMED THAT HE

03:19PM 20 TOLD YOU NOT TO INVEST IN LATE 2013, EARLY 2014?

03:19PM 21 A. I SAW THOSE.

03:19PM 22 Q. WERE THOSE STATEMENTS TRUE?

03:19PM 23 A. NO.

03:19PM 24 Q. DID HE ACTUALLY SAY THAT TO YOU?

03:19PM 25 A. NO, HE DIDN'T.

03:19PM 1 Q. WAS MR. BALWANI, IN YOUR VIEW, WELCOMING OF YOUR
03:19PM 2 INVESTMENT IN THERANOS IN 2013?

03:19PM 3 A. YES, HE WAS.

03:19PM 4 Q. MS. WALSH ALSO ASKED YOU WHETHER MR. BALWANI OR MS. HOLMES
03:19PM 5 EVER GUARANTEED THAT THERE WOULD BE A PUBLIC MARKET FOR
03:19PM 6 THERANOS SHARES.

03:19PM 7 DO YOU RECALL THAT?

03:19PM 8 A. YES.

03:19PM 9 Q. AND YOU ANSWERED THAT YOU NEVER RECEIVED AN EXPLICIT
03:19PM 10 GUARANTEE; IS THAT RIGHT?

03:19PM 11 A. THAT'S CORRECT.

03:19PM 12 Q. AS SOMEONE INVESTING IN A COMPANY, OR CONSIDERING AN
03:19PM 13 INVESTMENT, DO YOU RELY ON STATEMENTS MADE BY EXECUTIVES EVEN
03:19PM 14 WHEN THEY'RE NOT STYLED AS EXPLICIT GUARANTEES?

03:19PM 15 A. YES.

03:19PM 16 Q. AND DO YOU RELY ON THE TRUTH OF THE STATEMENTS EVEN WHEN
03:20PM 17 THEY'RE NOT EXPLICIT GUARANTEES?

03:20PM 18 A. YES.

03:20PM 19 Q. MS. WALSH ALSO ASKED YOU ABOUT SOME OF THE OTHER FACTORS
03:20PM 20 THAT INFLUENCED YOUR DECISION TO INVEST IN 2013.

03:20PM 21 DO YOU RECALL THOSE QUESTIONS?

03:20PM 22 A. YES.

03:20PM 23 Q. AND SHE DISCUSSED THINGS LIKE THE CONFIDENCE THAT
03:20PM 24 DAVID HARRIS HAD IN THE COMPANY.

03:20PM 25 DO YOU REMEMBER THAT?

03:20PM 1 A. YES.

03:20PM 2 Q. AND SHE DISCUSSED THE PRESENCE OF DON LUCAS ON THE BOARD;

03:20PM 3 IS THAT RIGHT?

03:20PM 4 A. YES.

03:20PM 5 Q. AND THE FACT THAT LARRY ELLISON HAD INVESTED IN THE

03:20PM 6 COMPANY?

03:20PM 7 A. YES.

03:20PM 8 Q. AND YOU WERE ALSO AWARE OF THE WALGREENS PARTNERSHIP WITH

03:20PM 9 THERANOS WHEN YOU INVESTED IN 2013; RIGHT?

03:20PM 10 A. YES.

03:20PM 11 Q. AND DID ALL OF THOSE THINGS INFLUENCE YOUR DECISION TO

03:20PM 12 INVEST?

03:20PM 13 A. YES, THEY DID.

03:20PM 14 Q. SO LET ME ASK THEN, WHEN IT CAME TO THE STATEMENTS THAT

03:20PM 15 YOU RECEIVED FROM MS. HOLMES ABOUT THE COMPANY, IN LIGHT OF ALL

03:20PM 16 OF THE OTHER INFORMATION THAT ALSO INFLUENCED YOUR DECISION,

03:20PM 17 DID THE THINGS THAT MS. HOLMES SAID MATTER TO YOU IN MAKING

03:20PM 18 YOUR DECISION TO INVEST MORE MONEY IN THE COMPANY IN 2013?

03:21PM 19 A. YES.

03:21PM 20 Q. AND HOW ABOUT FOR MR. BALWANI?

03:21PM 21 DID HIS STATEMENTS, BOTH DIRECTLY TO YOU AND THROUGH

03:21PM 22 MR. MENDENHALL, MAKE A DIFFERENCE TO YOU IN YOUR DECISION TO

03:21PM 23 INVEST IN THE COMPANY IN 2013?

03:21PM 24 A. YES. IT GAVE ME A GREATER DEGREE OF CONFIDENCE THAT, THAT

03:21PM 25 THE COMPANY HAD DEVELOPED A SUCCESSFUL TECHNOLOGY AND THE RISK

03:21PM 1 WAS SUBSTANTIALLY TAKEN OUT OF THIS INVESTMENT.

03:21PM 2 Q. AND IN MAKING THAT INVESTMENT, WERE YOU ASSUMING THE TRUTH
03:21PM 3 OF THE THINGS THAT MR. BALWANI HAD SAID?

03:21PM 4 A. YES.

03:21PM 5 Q. THANK YOU.

03:21PM 6 NO FURTHER QUESTIONS.

03:21PM 7 THE COURT: RECROSS.

03:21PM 8 **RECROSS-EXAMINATION**

03:21PM 9 BY MS. WALSH:

03:22PM 10 Q. GOOD AFTERNOON, MR. EISENMAN.

03:22PM 11 A. GOOD AFTERNOON.

03:22PM 12 Q. LET ME TAKE OFF MY MASK.

03:22PM 13 MR. EISENMAN, YOU TESTIFIED ON REDIRECT THAT NEITHER
03:22PM 14 MR. BALWANI NOR MS. HOLMES TOLD YOU IN AN EMAIL OR A PHONE CALL
03:23PM 15 THAT THERANOS, YOUR THERANOS INVESTMENT IN 2013 CARRIED GREAT
03:23PM 16 RISK.

03:23PM 17 CORRECT?

03:23PM 18 A. I'M SORRY. COULD YOU RESTATE THE QUESTION?

03:23PM 19 Q. SURE. YOU JUST TESTIFIED -- MR. BOSTIC JUST ASKED YOU IF
03:23PM 20 THERE WAS ANY PHONE CALL OR EMAIL WITH MR. BALWANI OR
03:23PM 21 MS. HOLMES LEADING UP TO YOUR 2013 INVESTMENT WHERE THEY TOLD
03:23PM 22 YOU THERANOS IS A RISKY INVESTMENT; IS THAT RIGHT?

03:23PM 23 A. ARE YOU TALKING ABOUT JUST BEFORE THE 2013, OR ARE YOU
03:23PM 24 TALKING ABOUT THE PERIOD OF 2010 TO 2013? WHAT TIME PERIOD ARE
03:23PM 25 YOU REFERRING TO?

03:23PM 1 Q. SO LET'S FOCUS ON THE TIME PERIOD JUST BEFORE THE 2013
03:23PM 2 INVESTMENT LEADING UP TO THAT INVESTMENT.

03:23PM 3 A. YES.

03:23PM 4 Q. I THINK YOU JUST TESTIFIED IN RESPONSE TO MR. BOSTIC'S
03:23PM 5 QUESTIONS THAT YOU DON'T REMEMBER HAVING A PHONE CALL OR AN
03:23PM 6 EMAIL WITH MR. BALWANI OR MS. HOLMES ABOUT YOUR INVESTMENT IN
03:24PM 7 THERANOS BEING A SPECULATIVE INVESTMENT?

03:24PM 8 A. NO.

03:24PM 9 Q. DO YOU REMEMBER THAT TESTIMONY?

03:24PM 10 A. IF YOU'RE ASKING ME IF I HAD AN EMAIL OR CONVERSATION WITH
03:24PM 11 MS. HOLMES OR MR. BALWANI IMMEDIATELY PRIOR TO MY 2013
03:24PM 12 INVESTMENT WHERE THEY TOLD ME IT WAS A SPECULATIVE INVESTMENT,
03:24PM 13 NO, I DON'T RECALL HAVING ANY COMMUNICATION.

03:24PM 14 TO THE CONTRARY. EVERYTHING LEADING UP TO THAT 2013
03:24PM 15 INVESTMENT WAS THE SCIENCE HAS BEEN PROVEN, THE RISK HAS BEEN
03:24PM 16 TAKEN OUT, AND THIS WAS MONEY TO HELP THE COMPANY GROW FASTER
03:24PM 17 TO CAPTURE A MARKET OPPORTUNITY AT A QUICKER PACE.

03:24PM 18 Q. RIGHT. AND YOU HAVE A LAW DEGREE, DON'T YOU,
03:24PM 19 MR. EISENMAN?

03:24PM 20 A. YES.

03:24PM 21 Q. AND YOU'RE A CPA; RIGHT?

03:24PM 22 A. I WAS.

03:24PM 23 Q. YOU WERE BEFORE YOU RETIRED; RIGHT?

03:24PM 24 A. RIGHT.

03:24PM 25 Q. AND YOU HAVE BEEN INVESTING IN COMPANIES FOR 20 TO

03:25PM 1 30 YEARS; RIGHT?

03:25PM 2 A. CORRECT.

03:25PM 3 Q. AND FOR THE THERANOS INVESTMENT IN 2013, YOU SIGNED A
03:25PM 4 SHAREHOLDER AGREEMENT, DID YOU NOT?

03:25PM 5 A. I DID.

03:25PM 6 Q. AND THAT AGREEMENT SPECIFICALLY SAID THAT THE INVESTMENT
03:25PM 7 IN THERANOS IS OF A SPECULATIVE NATURE. THAT AGREEMENT SAID
03:25PM 8 THAT, DIDN'T IT?

03:25PM 9 A. I THINK WE'VE ALREADY TALKED ABOUT THIS EARLIER. THAT IS
03:25PM 10 WHAT IS CALLED BOILERPLATE, AND THAT IS LANGUAGE THAT IS PUT IN
03:25PM 11 ALL DOCUMENTATION, OR MOST OR ALL DOCUMENTATION ON ANY PRIVATE
03:25PM 12 EQUITY OFFERING.

03:25PM 13 AND AS A PRACTICAL MATTER, THAT'S, THAT'S PUT IN THE
03:25PM 14 DOCUMENTS TO REDUCE POTENTIAL LIABILITY OF A COMPANY.

03:25PM 15 BUT AS A PRACTICAL MATTER, THAT TOTALLY CONTRADICTED WHAT
03:25PM 16 I HAD BEEN LED TO BELIEVE BY THE, THE COMMUNICATION WITH
03:25PM 17 MR. MENDENHALL AND OTHER COMMUNICATION, AND I RELIED MORE ON
03:25PM 18 THAT COMMUNICATION THAN A MULTIPAGE LEGAL DOCUMENT THAT
03:26PM 19 BASICALLY HAS THE SAME TYPE OF DISCLAIMERS THAT EVERY OTHER
03:26PM 20 DOCUMENT OF ITS ILK HAS.

03:26PM 21 Q. SO THE AGREEMENT SAID IT WAS A SPECULATIVE INVESTMENT, DID
03:26PM 22 IT NOT?

03:26PM 23 A. THE AGREEMENT SAID IT WAS A SPECULATIVE INVESTMENT, BUT
03:26PM 24 THAT CONTRADICTED WHAT WAS MORE IMPORTANT, THE INFORMATION THAT
03:26PM 25 I GOT DIRECTLY FROM THE TOP PEOPLE IN THE COMPANY.

03:26PM 1 Q. THE AGREEMENT SAID IT WAS A SPECULATIVE INVESTMENT, DID IT
03:26PM 2 NOT?

03:26PM 3 A. YES, THE AGREEMENT SAID IT WAS A SPECULATIVE INVESTMENT.

03:26PM 4 Q. OKAY. OKAY. SO LET'S GO TO -- MR. BOSTIC ASKED YOU ABOUT
03:26PM 5 THIS EMAIL IN 2015, WHICH IS EXHIBIT 12999.
03:27PM 6 SO CAN WE PULL THAT EXHIBIT UP.
03:27PM 7 OKAY. LET'S GO TO -- DO YOU SEE THAT, MR. EISENMAN, ON
03:27PM 8 YOUR SCREEN?

03:27PM 9 A. YES. YES.

03:27PM 10 Q. LET'S GO TO PAGE 2 OF THAT EXHIBIT.

03:27PM 11 A. OKAY.

03:27PM 12 Q. SO I CAN READ IT. OKAY.
03:27PM 13 SO IN THE MIDDLE OF THE PAGE, MR. BALWANI SAYS TO YOU IN
03:27PM 14 THAT MIDDLE PARAGRAPH STARTING WITH "YOU CONTINUE TO BOMBARD
03:27PM 15 US."
03:27PM 16 DO YOU SEE THAT PARAGRAPH?

03:27PM 17 A. YES.

03:27PM 18 Q. "JUST 12 SHORT MONTHS AGO I SPOKE WITH YOU IN DETAIL THAT
03:27PM 19 YOU WILL NOT GET ANY UPDATES, THAT YOU SHOULD NOT INVEST."
03:27PM 20 DO YOU SEE THAT?

03:28PM 21 A. YES. BUT IF THIS TIMELINE WAS CORRECT, THIS WAS AFTER I
03:28PM 22 HAD ALREADY INVESTED.

03:28PM 23 Q. YES. DO YOU SEE THAT LANGUAGE IN THE EMAIL?

03:28PM 24 A. YES. BUT THAT CONTRADICTS WHAT, WHAT I WAS TOLD BEFORE I
03:28PM 25 INVESTED.

03:28PM 1 Q. RIGHT. AND SO WHEN YOU RESPOND TO MR. BALWANI ON
03:28PM 2 PAGE 1 -- DO YOU SEE YOUR RESPONSE ON PAGE 1?
03:28PM 3 A. YES.
03:28PM 4 Q. YOU DON'T SAY TO MR. BALWANI "THAT'S NOT TRUE," DO YOU?
03:28PM 5 A. NO, I DO NOT SAY THAT IN THIS EMAIL.
03:28PM 6 Q. YOU DON'T SAY "THAT'S A LIE, MR. BALWANI," DO YOU?
03:28PM 7 A. UM, IN THIS EMAIL I, I DID NOT SAY THAT, BUT I WAS
03:28PM 8 PROBABLY THINKING THAT.
03:28PM 9 Q. BUT YOU DIDN'T SAY IT; RIGHT?
03:28PM 10 A. I DID NOT SAY THAT IN THIS SHORT AND SWEET EMAIL, NO, I
03:29PM 11 DIDN'T.
03:29PM 12 Q. OKAY. AND LET'S GO UP THE CHAIN ONE MORE.
03:29PM 13 MR. BALWANI SAYS "ALAN.
03:29PM 14 "NO ONE FROM THIS COMPANY HAS EVER COMMITTED TO A SHORT
03:29PM 15 QUARTERLY CALL WITH YOU OR ANY OTHER INVESTOR SELECTIVELY. I
03:29PM 16 WAS VERY EXPLICITLY DISCOURAGING YOU FROM INVESTING IN JANUARY
03:29PM 17 OF 2014."
03:29PM 18 DO YOU SEE THAT LANGUAGE?
03:29PM 19 A. YES. BUT I DON'T UNDERSTAND BECAUSE THE INVESTMENT WAS IN
03:29PM 20 DECEMBER OF 2013, AND HE DID NOT DISCOURAGE ME IN ANY WAY FROM
03:29PM 21 INVESTING IN 2013.
03:29PM 22 Q. DO YOU SEE THAT LANGUAGE IN THE EMAIL?
03:29PM 23 A. I DO SEE THE LANGUAGE.
03:29PM 24 Q. AND THEN LET'S GO UP THE CHAIN TO YOUR RESPONSE.
03:29PM 25 DO YOU SEE YOUR RESPONSE?

03:29PM 1 A. YES.

03:29PM 2 Q. THERE'S NOTHING IN YOUR RESPONSE SAYING, "NO, SUNNY,

03:29PM 3 THAT'S NOT TRUE." CORRECT?

03:29PM 4 A. IF YOU WANT TO, IF YOU WANT TO SAY SPECIFICALLY, YES, IN A

03:29PM 5 SHORT EMAIL, EVEN THOUGH I FELT THAT THIS WAS NOT TRUE, I DID

03:29PM 6 NOT STATE IT IN THIS PARTICULAR EMAIL.

03:30PM 7 Q. SO YOU DON'T SAY THAT IN THE EMAIL; RIGHT?

03:30PM 8 A. I DO NOT SAY THAT IN THIS EMAIL.

03:30PM 9 Q. OKAY. SO IN THIS EMAIL CHAIN, MR. BALWANI SAYS TO YOU TWO

03:30PM 10 DIFFERENT TIMES THAT HE TOLD YOU THAT YOU SHOULDN'T INVEST, AND

03:30PM 11 HE WAS DISCOURAGING YOU FROM INVESTING; CORRECT?

03:30PM 12 A. UH --

03:30PM 13 Q. IN THIS EMAIL?

03:30PM 14 A. IN THIS EMAIL.

03:30PM 15 BUT AS I JUST SAID, THE EMAILS ARE MISLEADING BECAUSE

03:30PM 16 THAT'S NOT WHAT HE -- THAT'S NOT THE WAY HE RESPONDED WHEN I

03:30PM 17 WAS INVESTING IN DECEMBER OF 2013. HE WAS ENCOURAGING.

03:30PM 18 THESE TWO EMAILS CONTRADICT THE, THE INFORMATION AND THE

03:30PM 19 MANNER THAT INFORMATION WAS PRESENTED BEFORE WE INVESTED IN

03:30PM 20 THAT 2013 ROUND.

03:30PM 21 Q. AND IN THIS EMAIL HE SAYS TWO DIFFERENT TIMES HE WAS

03:30PM 22 DISCOURAGING YOU FROM INVESTING; CORRECT?

03:30PM 23 YES OR NO?

03:30PM 24 A. IF YOU WANT THE SPECIFIC ANSWER, HE IS DISCOURAGING ME IN

03:31PM 25 THIS EMAIL.

03:31PM 1 BUT YOU HAVE TO TAKE IT WITH A GRAIN OF SALT. THIS IS NOT
03:31PM 2 ACCURATE, AND IT'S NOT TRUTHFUL.

03:31PM 3 Q. SO THE ANSWER TO MY QUESTION ABOUT WHETHER HE SAID HE
03:31PM 4 DISCOURAGED YOU TWICE IN THIS EMAIL IS, YES, THAT'S CORRECT?

03:31PM 5 A. THE ANSWER THAT HE STATED THAT HE DISCOURAGED ME FROM
03:31PM 6 INVESTING AFTER I HAD INVESTED, YES, IT'S TRUE THAT HE SAID
03:31PM 7 THAT HE DISCOURAGED ME.

03:31PM 8 BUT THAT'S NOT TRUE.

03:31PM 9 Q. SO IT'S IN THE EMAIL THAT HE SAID HE DISCOURAGED YOU TWO
03:31PM 10 DIFFERENT TIMES; IS THAT RIGHT? YES OR NO?

03:31PM 11 IT'S A YES OR NO QUESTION, YOUR HONOR.

03:31PM 12 MR. BOSTIC: OBJECTION. ASKED AND ANSWERED.
03:31PM 13 ARGUMENTATIVE.

03:31PM 14 THE COURT: WELL, CAN YOU ANSWER THE QUESTION YES OR
03:31PM 15 NO?

03:31PM 16 THE WITNESS: YES, I CAN.

03:31PM 17 THE COURT: YES OR NO.

03:31PM 18 THE WITNESS: SO IS THE QUESTION, DID HE DISCOURAGE
03:31PM 19 ME FROM --

03:31PM 20 THE COURT: EXCUSE ME, SIR.

03:31PM 21 THE WITNESS: I'M SORRY.

03:31PM 22 THE COURT: WOULD YOU ASK THE QUESTION ONE MORE
03:31PM 23 TIME?

03:31PM 24 I BELIEVE THIS IS GOING TO BE A YES OR NO QUESTION.

03:31PM 25 THE WITNESS: OKAY.

03:31PM 1 THE COURT: SO YOU CAN ASK THE QUESTION ONE MORE
03:31PM 2 TIME.

03:31PM 3 THE WITNESS: OKAY.

03:31PM 4 BY MS. WALSH:

03:31PM 5 Q. IN EXHIBIT 12999, THE EMAIL CHAIN THAT WE'RE LOOKING AT,
03:32PM 6 DID MR. BALWANI SAY IN THAT EMAIL CHAIN, ON TWO DIFFERENT
03:32PM 7 OCCASIONS, THAT HE DISCOURAGED YOU FROM INVESTING?

03:32PM 8 A. YES, HE DID SAY THAT.

03:32PM 9 Q. OKAY. AND IN THAT SAME EMAIL CHAIN, YOU DO NOT SAY IN
03:32PM 10 RESPONSE TO EITHER OF THOSE STATEMENTS, "NO, SUNNY, THAT IS NOT
03:32PM 11 ACCURATE."

03:32PM 12 IS THAT RIGHT?

03:32PM 13 A. THAT IS RIGHT.

03:32PM 14 Q. MR. BOSTIC ALSO ASKED YOU ABOUT OFFERS FOR YOU TO SELL
03:32PM 15 YOUR THERANOS STOCK.

03:32PM 16 DO YOU REMEMBER THAT?

03:32PM 17 A. YES.

03:32PM 18 Q. OKAY. AND YOUR TESTIMONY WAS THAT THE OFFERS NEVER CAME
03:32PM 19 TO FRUITION; RIGHT?

03:32PM 20 A. THAT IS CORRECT. NONE OF THE OFFERS WERE -- EITHER THEY
03:33PM 21 WEREN'T LEGITIMATE OR THEY NEVER CAME TO FRUITION. NONE,
03:33PM 22 NONE -- I PURSUED EVERY OFFER THAT WAS MADE TO ME, AND I COULD
03:33PM 23 NOT GET TO THE FINISH LINE ON ANY OF THE OFFERS THAT WERE
03:33PM 24 PRESENTED.

03:33PM 25 Q. OKAY. YOU ARE A PERSISTENT SHAREHOLDER; IS THAT FAIR TO

03:33PM 1 SAY, MR. EISENMAN?

03:33PM 2 A. THAT'S FAIR.

03:33PM 3 Q. YOU FOLLOW UP ON EVERY QUESTION THAT YOU DO NOT GET
03:33PM 4 ANSWERED; IS THAT RIGHT?

03:33PM 5 A. I ATTEMPT.

03:33PM 6 Q. YOU TRY TO DO THAT; RIGHT?

03:33PM 7 A. YES.

03:33PM 8 Q. OKAY. AND WHEN YOU DON'T GET AN ANSWER OR WHEN YOU DON'T
03:33PM 9 GET A RESPONSE FROM SOMEONE, YOU FOLLOW UP WITH AN EMAIL;
03:33PM 10 CORRECT?

03:33PM 11 A. SOMETIMES.

03:33PM 12 Q. YOU DO THAT MOST OF THE TIME, DON'T YOU?

03:33PM 13 A. IT DEPENDS ON THE CIRCUMSTANCE.

03:33PM 14 Q. WELL, YOU DID THAT HERE WITH THERANOS. WE JUST WENT
03:33PM 15 THROUGH DOZENS OF EMAILS WHERE YOU'RE FOLLOWING UP FOR
03:33PM 16 INFORMATION OVER AND OVER AGAIN; RIGHT?

03:33PM 17 A. THERANOS WAS A UNIQUE SITUATION.

03:33PM 18 I HAD SIGNIFICANTLY MORE INVESTED IN THIS THAN ANY OTHER
03:34PM 19 EARLY STAGE COMPANY, AND TYPICALLY WHERE THERE'S SMOKE, THERE'S
03:34PM 20 FIRE, AND THERE WAS A LOT OF SMOKE THROUGH THE YEARS. THERE
03:34PM 21 WAS A LOT OF INFORMATION THAT REALLY WAS NOT MAKING SENSE.

03:34PM 22 Q. SO LET'S TALK ABOUT THERANOS.

03:34PM 23 REGARDING THERANOS, YOU FOLLOWED UP EVERY TIME YOU DIDN'T
03:34PM 24 GET THE INFORMATION THAT YOU WERE LOOKING FOR; ISN'T THAT
03:34PM 25 RIGHT?

03:34PM 1 A. I WOULD SAY THAT I FOLLOWED UP A LOT. I DON'T KNOW IF IT
03:34PM 2 WAS EVERY SINGLE TIME.

03:34PM 3 Q. QUITE A BIT; RIGHT?

03:34PM 4 A. WITH SOME FREQUENCY.

03:34PM 5 Q. WE JUST SAW A LOT OF EMAILS ABOUT THAT; RIGHT?

03:34PM 6 A. THIS WAS OVER A, A 10, 11 YEAR PERIOD OF TIME.

03:34PM 7 Q. SO WE JUST SAW A LOT OF EMAILS ABOUT THAT; CORRECT?

03:34PM 8 A. RIGHT. BUT IT WAS EMAILS OVER A 10 OR 11 YEAR PERIOD OF
03:34PM 9 TIME.

03:34PM 10 Q. AND WHEN YOU DON'T GET A RESPONSE FROM SOMEONE AT
03:34PM 11 THERANOS, YOU FOLLOW UP TO GET AN ANSWER; RIGHT?

03:34PM 12 A. I DO MY BEST.

03:34PM 13 Q. OKAY. AND WE DIDN'T SEE ANY EMAILS IN THE EMAILS THAT THE
03:34PM 14 GOVERNMENT SHOWED YOU OR I SHOWED YOU WHERE YOU SAY, "HEY, WHAT
03:34PM 15 ABOUT THAT OFFER FOR ME TO SELL MY SHARES? I WANT OUT OF
03:35PM 16 THERANOS."

03:35PM 17 WE DIDN'T SEE AN EMAIL TO THAT EFFECT; RIGHT?

03:35PM 18 A. I'M SORRY. ARE YOU TALKING ABOUT THE GREATER THAN FIVE
03:35PM 19 TIMES OFFER, OR ARE YOU TALKING ABOUT THE CHRIS BOIES OFFER?

03:35PM 20 Q. ANY OFFER AT ALL.

03:35PM 21 A. I FOLLOWED UP WITH ANY OFFER AS AGGRESSIVELY AS I COULD,
03:35PM 22 AND THEY WENT AWAY. THEY WERE FICTION.

03:35PM 23 Q. AND WE DON'T SEE ANY EMAILS REFLECTING THAT, DO WE,
03:35PM 24 MR. EISENMAN?

03:35PM 25 A. I DON'T KNOW. I COULD GO THROUGH MY INFORMATION. I DON'T

03:35PM 1 HAVE IT AT MY FINGERTIPS.

03:35PM 2 BUT IF YOU FOLLOW THE EMAIL CHAIN, I FOLLOWED UP AS
03:35PM 3 AGGRESSIVELY AS I COULD TO BRING ANY OF THOSE OFFERS TO THE
03:35PM 4 FINISH LINE, AND IN THE FIRST OFFER THERANOS TOTALLY DROPPED
03:35PM 5 THE BALL AND THEY REFUSED TO COMMUNICATE WITH ME.

03:35PM 6 THE SECOND OFFER, THE SAME THING HAPPENED. THEY DROPPED
03:35PM 7 THE BALL AND THEY REFUSED TO COMMUNICATE WITH ME.

03:35PM 8 Q. BUT WE HAVEN'T SEEN A SINGLE EMAIL TODAY WHERE YOU SAY, "I
03:35PM 9 WANT TO SELL MY SHARES. MAKE IT HAPPEN." YOU DON'T SAY
03:35PM 10 ANYTHING OR WORDS TO THAT EFFECT, DO YOU?

03:35PM 11 A. WE WEREN'T IN THAT PART OF THE DEAL.

03:36PM 12 WE WERE IN THE PART OF THE DEAL WHERE I WAS MADE AN OFFER
03:36PM 13 AND I WAS TRYING TO PURSUE THAT. THEY NEVER MADE A FIRM OFFER.
03:36PM 14 NONE OF THOSE OFFERS WERE FIRM. THEY WERE JUST COMMUNICATION
03:36PM 15 TO ME ABOUT WE'RE TRYING. IT WAS NEVER A FIRM OFFER. THERE
03:36PM 16 WAS NOTHING THAT WAS FIRM OR ESTABLISHED.

03:36PM 17 Q. AND WE DON'T SEE ANY EMAILS FROM YOU SAYING, "HEY, WHERE
03:36PM 18 IS MY FIRM OFFER," DO WE?

03:36PM 19 A. I THINK IF YOU SEE MY EMAILS, I PURSUED THEM AS
03:36PM 20 AGGRESSIVELY AS I COULD.

03:36PM 21 WHAT HAPPENED TO THE FIRST OFFER? WHERE IS IT? WHEN ARE
03:36PM 22 YOU GOING TO COMMUNICATE?

03:36PM 23 IT WAS SUPPOSED TO BE BY THE END OF THE SUMMER. THEN IT
03:36PM 24 WAS SUPPOSED TO BE BY THE END OF THE YEAR.

03:36PM 25 YES, I DID FOLLOW UP.

03:36PM 1 AND THEN ON THE SECOND OFFER, I HAVE A WHOLE CHAIN OF
03:36PM 2 COMMUNICATION WITH CHRIS BOIES AND HE WENT SILENT FOR A PERIOD
03:36PM 3 OF MONTHS AFTER HE BROUGHT THAT OFFER TO ME.
03:36PM 4 Q. AND WHEN HE WENT SILENT, YOU DIDN'T SEND ANY EMAILS TO
03:36PM 5 FOLLOW UP AS TO, WHERE IS MY FIRM OFFER, DID YOU?
03:36PM 6 A. I DON'T KNOW IF THEY WERE EMAILS OR CALLS, BUT I FOLLOWED
03:37PM 7 UP AGGRESSIVELY WITH CHRIS BOIES.
03:37PM 8 Q. AND THE ONLY EMAIL THAT WE HAVE SEEN TODAY REGARDING AN
03:37PM 9 OFFER FOR YOU TO SELL YOUR SHARES IS YOU TELLING
03:37PM 10 ELIZABETH HOLMES THAT YOU HAVEN'T DECIDED WHETHER YOU WANT TO
03:37PM 11 SELL YOUR SHARES?
03:37PM 12 A. THAT'S NOT TRUE.
03:37PM 13 Q. WELL, WE SAW THAT EMAIL; RIGHT?
03:37PM 14 A. NO. SHOW ME THE EMAIL.
03:37PM 15 THERE WAS A PERIOD WHEN --
03:37PM 16 Q. THERE'S NO QUESTION PENDING.
03:37PM 17 A. OKAY.
03:37PM 18 Q. TURN TO EXHIBIT, I THINK THIS IS IN EVIDENCE, 14224.
03:37PM 19 MS. ROBINSON, CAN YOU JUST CONFIRM?
03:37PM 20 THE CLERK: CAN YOU REPEAT THAT?
03:37PM 21 MS. WALSH: I'M SORRY. 14224.
03:37PM 22 THE CLERK: YES, THAT IS IN EVIDENCE.
03:37PM 23 MS. WALSH: OKAY. WE CAN BRING THAT UP?
03:37PM 24 THE COURT: YES.
03:37PM 25 BY MS. WALSH:

03:37PM 1 Q. THIS IS AN EMAIL, ISN'T IT, MR. EISENMAN?

03:37PM 2 A. YES.

03:37PM 3 Q. AND IT'S FROM YOU TO ELIZABETH HOLMES; CORRECT?

03:38PM 4 A. CORRECT.

03:38PM 5 Q. AND IT'S ON JULY 1ST, 2010; RIGHT?

03:38PM 6 A. CORRECT.

03:38PM 7 Q. AND YOU SAY "ELIZABETH,

03:38PM 8 "I HAVEN'T MADE A DECISION WHETHER TO SELL STOCK."

03:38PM 9 RIGHT?

03:38PM 10 A. CAN I EXPLAIN THAT?

03:38PM 11 Q. JUST DO THE WORDS ON THIS EMAIL SAY "I HAVEN'T MADE A

03:38PM 12 DECISION WHETHER TO SELL STOCK"?

03:38PM 13 YES OR NO?

03:38PM 14 A. THAT IS WHAT THE WORDS SAY.

03:38PM 15 BUT IT'S NUANCED AND I'D LIKE AN OPPORTUNITY TO EXPLAIN

03:38PM 16 THAT IF POSSIBLE.

03:38PM 17 Q. OKAY. WELL, MR. BOSTIC WILL HAVE AN OPPORTUNITY TO ASK

03:38PM 18 YOU THOSE QUESTIONS.

03:38PM 19 I JUST WANTED TO KNOW AND TO CONFIRM THAT THAT WAS AN

03:38PM 20 EMAIL FROM YOU TELLING ELIZABETH HOLMES THAT YOU HADN'T DECIDED

03:38PM 21 WHETHER TO SELL YOUR STOCK.

03:38PM 22 THAT'S THE CASE; RIGHT?

03:38PM 23 A. IF YOU LOOK AT THE WORDS ON THE PAGE, YES, THOSE ARE THE

03:38PM 24 WORDS ON THE PAGE.

03:38PM 25 BUT SOMETIMES THEY NEED A LITTLE ADDITIONAL EXPLANATION.

03:38PM 1 Q. SO THE WORDS ON THE PAGE SAY "I HAVEN'T MADE A DECISION
03:38PM 2 WHETHER TO SELL STOCK"; CORRECT?

03:38PM 3 A. YES, THAT'S WHAT THE WORDS ON THE PAGE SAY.

03:38PM 4 Q. OKAY.

03:38PM 5 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

03:38PM 6 THE COURT: RECROSS?

03:38PM 7 MR. BOSTIC: VERY BRIEFLY, YOUR HONOR.

03:39PM 8 **FURTHER REDIRECT EXAMINATION**

03:39PM 9 BY MR. BOSTIC:

03:39PM 10 Q. MR. EISENMAN, MS. WALSH WAS JUST ASKING YOU ABOUT AN EMAIL
03:39PM 11 WHERE YOU SAID THAT YOU HADN'T MADE A DECISION WHETHER TO SELL
03:39PM 12 STOCK.

03:39PM 13 A. CORRECT.

03:39PM 14 Q. I JUST WANTED TO GIVE YOU AN OPPORTUNITY TO EXPLAIN THAT
03:39PM 15 SENTENCE THAT YOU SAID THERE WAS MORE TO THAT SITUATION.

03:39PM 16 TELL US WHAT THAT WAS.

03:39PM 17 A. THEY HAD MADE AN OFFER TO BUY OUR STOCK POTENTIALLY AT
03:39PM 18 GREATER THAN FIVE TIMES OUR ORIGINAL INVESTMENT, AND IT WAS
03:39PM 19 PENDING APPROVALS, WHATEVER THAT MEANT. THEY DIDN'T EXPLAIN
03:39PM 20 WHAT THAT MEANT.

03:39PM 21 THAT OFFER WAS SUPPOSED TO COME BEFORE THE SUMMER, AND
03:39PM 22 THEN THAT OFFER WAS EXTENDED AND WE'RE STILL WORKING ON IT AND
03:39PM 23 MAYBE IT WILL COME BY THE END OF THE YEAR AND MAYBE IT WILL GO
03:39PM 24 AWAY.

03:39PM 25 BUT IN THE MEANTIME, LIKE ANY REASONABLE INVESTOR, I HAD

03:39PM 1 REQUESTED WHATEVER FINANCIAL INFORMATION THAT THEY COULD SHARE
03:39PM 2 BECAUSE THIS WAS BY FAR THE LARGEST INVESTMENT IN MY PORTFOLIO
03:39PM 3 AND ONE OF THE MOST POTENTIAL SUCCESSFUL INVESTMENTS THAT I
03:39PM 4 COULD EVER MAKE IN MY LIFE.

03:39PM 5 AND BEFORE I ACCEPT AN OFFER FROM THE COMPANY, IT WOULD
03:40PM 6 ONLY BE FAIR TO SHARE SOME FINANCIAL INFORMATION TO KNOW IF
03:40PM 7 THIS WAS A REASONABLE TRANSACTION.

03:40PM 8 AND ONE OF THE WAYS THAT, IF THERE WAS SOME CONFIDENTIAL
03:40PM 9 INFORMATION, I COULD HAVE SIGNED A NONDISCLOSURE AGREEMENT,
03:40PM 10 WHICH MEANS THAT I WAS FORBIDDEN TO DISCUSS ANY OF THE DETAILS
03:40PM 11 OF THIS WITH ANYONE.

03:40PM 12 THERE WAS, THERE WAS A CHANCE I MIGHT HAVE TAKEN THAT
03:40PM 13 OFFER ANYWAY BECAUSE I WAS SO FRUSTRATED WITH THE COMPANY THAT
03:40PM 14 I WAS REQUESTING MORE FINANCIAL INFORMATION TO MAKE AN
03:40PM 15 INTELLIGENT DECISION.

03:40PM 16 BUT THE POINT IS MOOT BECAUSE THAT OFFER NEVER CAME TO
03:40PM 17 FRUITION. I PURSUED THAT OFFER, AND THEY JUST, THEY JUST
03:40PM 18 REFUSED TO COMMUNICATE.

03:40PM 19 Q. MS. WALSH ALSO ASKED YOU ABOUT YOUR EFFORTS TO FOLLOW UP
03:40PM 20 ON OFFERS TO SELL YOUR SHARES.

03:40PM 21 DO YOU RECALL THAT?

03:40PM 22 A. YES.

03:40PM 23 Q. AND SHE ASKED YOU ABOUT THE EMAILS THAT WE HAD SEEN IN
03:40PM 24 COURT TODAY.

03:40PM 25 DO YOU RECALL THAT QUESTION?

03:40PM 1

A. YES.

03:40PM 2

Q. DID THE EMAILS THAT WERE INTRODUCED INTO EVIDENCE TODAY IN COURT INCLUDE ALL OF THE COMMUNICATIONS YOU HAD WITH THERANOS OR OTHERS ABOUT SELLING YOUR STOCK?

03:41PM 3

03:41PM 4

03:41PM 5

A. PROBABLY NOT.

03:41PM 6

MR. BOSTIC: NO FURTHER QUESTIONS. THANK YOU.

03:41PM 7

THE COURT: MS. WALSH.

03:41PM 8

(PAUSE IN PROCEEDINGS.)

03:41PM 9

MS. WALSH: NOTHING FURTHER, YOUR HONOR.

03:41PM 10

THE COURT: MAY THIS WITNESS BE EXCUSED?

03:41PM 11

MR. BOSTIC: YES, YOUR HONOR.

03:41PM 12

MS. WALSH: YES, YOUR HONOR.

03:41PM 13

THE COURT: YOU MAY BE EXCUSED.

03:41PM 14

WE HAVE SOME TIME LEFT IN OUR DAY. DO YOU HAVE A WITNESS

03:41PM 15

HERE WE COULD START?

03:41PM 16

MR. LEACH: WE DO, YOUR HONOR.

03:41PM 17

THE COURT: GREAT.

03:41PM 18

MR. LEACH: THE GOVERNMENT CALLS LYNETTE SAWYER.

03:41PM 19

THE COURT: PLEASE FEEL FREE TO STAND AND STRETCH.

03:41PM 20

LET ME ASK THE JURY COLLECTIVELY ALSO, MY SENSE IS THAT

03:41PM 21

THIS WITNESS MIGHT BE BRIEF. I DON'T THINK WE'LL COMPLETE THIS WITNESS BY 4:00 O'CLOCK.

03:42PM 22

03:42PM 23

IS THAT LIKELY?

03:42PM 24

MR. LEACH: YOUR HONOR, I THINK I CAN COMPLETE THE

03:42PM 25

DIRECT EXAMINATION BY 4:00 O'CLOCK, BUT I'M ASSUMING THERE IS

03:42PM 1 CROSS-EXAMINATION AND I DON'T THINK WE WILL BE FINISHED BY
03:42PM 2 THEN.

03:42PM 3 MS. WALSH: THERE WILL BE CROSS-EXAMINATION.

03:42PM 4 THE COURT: RIGHT, RIGHT.

03:42PM 5 DO YOU THINK IT WOULD TAKE US TO THE BOTTOM OF THE HOUR,
03:42PM 6 OR WOULD IT BE LONGER?

03:42PM 7 I'M WONDERING IF I COULD ASK THE JURY IF THEY HAVE THE
03:42PM 8 ABILITY TO STAY A LITTLE LATER TO COMPLETE THE WITNESS.

03:42PM 9 MS. WALSH: I THINK IT WILL GO BEYOND THE BOTTOM OF
03:42PM 10 THE HOUR.

03:42PM 11 THE COURT: OKAY. HOW CLOSE TO 5:00 O'CLOCK WOULD
03:42PM 12 THAT BE?

03:42PM 13 IF YOU CAN'T TELL ME, THAT'S FINE. I DON'T WANT TO PUT
03:42PM 14 ANY CONSTRAINTS.

03:42PM 15 I JUST -- IF WE CAN FINISH THE WITNESS AND IF THE JURY IS
03:42PM 16 WILLING TO STAY UNTIL SOMETIME CLOSE TO 5:00 O'CLOCK, WE CAN
03:42PM 17 MAYBE PRESS ON.

03:42PM 18 MS. WALSH: IT WOULDN'T GO PAST 5:00, I DON'T THINK.
03:43PM 19 IT'S HARD TO SAY.

03:43PM 20 THE COURT: OKAY. ALL RIGHT.

03:43PM 21 WELL, LET'S JUST CALL THE WITNESS AND SEE WHERE WE GO.
03:43PM 22 THANK YOU.

03:43PM 23 MR. LEACH: VERY WELL, YOUR HONOR. THANK YOU.

03:43PM 24 THE COURT: IF YOU CAN STAND BY THE COURTROOM DEPUTY
03:43PM 25 AND RAISE YOUR RIGHT HAND.

(GOVERNMENT'S WITNESS, LYNETTE SAWYER, WAS SWORN.)

THE WITNESS: I DO.

THE COURT: PLEASE HAVE A SEAT HERE AND MAKE
YOURSELF COMFORTABLE.

FEEL FREE TO ADJUST THE CHAIR AND MICROPHONE AS YOU NEED.
IF YOU'RE FULLY VACCINATED --

THE WITNESS: I AM.

THE COURT: -- WHICH MEANS BOOSTED AS WELL, YOU CAN
REMOVE YOUR MASK.

WOULD YOU PLEASE STATE YOUR NAME AND THEN SPELL IT,
PLEASE.

THE WITNESS: MY NAME IS LYNETTE SAWYER.
L-Y-N-E-T-T-E, S-A-W-Y-E-R.

THE COURT: THANK YOU.

COUNSEL.

MR. LEACH: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. LEACH:

Q. GOOD AFTERNOON, MS. SAWYER.

A. GOOD AFTERNOON.

Q. EXCUSE ME, DR. SAWYER.

I'LL REMOVE MY MASK AS WELL?

IN THE FOURTH QUARTER OF 2014, DID SUNNY BALWANI ASK YOU
TO SERVE AS THE CO-DIRECTOR OF THERANOS'S CALIFORNIA CLINICAL
LAB?

03:44PM 1 A. NOT DIRECTLY. HE ASKED ME THROUGH LABORATORY CONSULTING
03:44PM 2 SERVICES.

03:44PM 3 Q. AND DID YOU ULTIMATELY AGREE TO BECOME THE CO-DIRECTOR OF
03:44PM 4 THERANOS CLINICAL LAB?

03:44PM 5 A. YES.

03:44PM 6 Q. AND WERE YOU THE CO-DIRECTOR OF THERANOS'S CLINICAL
03:44PM 7 LABORATORY FROM LATE 2014 UNTIL APPROXIMATELY JUNE OF 2015?

03:44PM 8 A. YES.

03:44PM 9 Q. WHY DID YOU STOP BEING A CO-DIRECTOR FOR THERANOS'S
03:44PM 10 CALIFORNIA CLINICAL LABORATORY?

03:44PM 11 A. BECAUSE I HAD SIGNED ON TO DO IT AS A VERY TEMPORARY
03:44PM 12 POSITION. IT WAS PROPOSED TO ME AS A TWO TO THREE MONTHS
03:44PM 13 DIRECTORSHIP, AT WHICH POINT THEIR NEW DIRECTOR WOULD COME ON.

03:45PM 14 WE MADE THE CONTRACT FOR SIX MONTHS SO THAT I WOULD BE A
03:45PM 15 CO-DIRECTOR WITH THEIR NEW DIRECTOR. WE WOULDN'T SWITCH OUT
03:45PM 16 DIRECTORS TOO FREQUENTLY. LAB FIELD SERVICES DOESN'T LIKE
03:45PM 17 THAT.

03:45PM 18 Q. OKAY. AT THE TIME THAT YOU RESIGNED IN JUNE OF 2015, WERE
03:45PM 19 YOU COMFORTABLE WITH THE LEVEL OF INFORMATION THAT YOU WERE
03:45PM 20 GETTING FROM THERANOS?

03:45PM 21 A. NO.

03:45PM 22 Q. LET'S TALK A LITTLE BIT ABOUT YOUR EDUCATIONAL AND
03:45PM 23 PROFESSIONAL BACKGROUND.

03:45PM 24 DO YOU HAVE A COLLEGE DEGREE?

03:45PM 25 A. I DO. I HAVE A BACHELORS IN MICROBIOLOGY.

03:45PM 1 Q. AND WHERE IS THAT FROM?

03:45PM 2 A. SAN DIEGO STATE UNIVERSITY.

03:45PM 3 Q. AT SOME POINT DID YOU OBTAIN A MASTER DEGREE?

03:45PM 4 A. I DID OBTAINED A MASTERS IN PUBLIC HEALTH FROM BERKELEY.

03:45PM 5 Q. AND DID YOU ALSO OBTAIN A PH.D. IN PUBLIC HEALTH FROM

03:45PM 6 U.C. BERKELEY?

03:45PM 7 A. TECHNICALLY IT'S A D.PH., BUT I DID.

03:45PM 8 Q. THANK YOU FOR THAT PRECISION.

03:45PM 9 CAN YOU TALK BRIEFLY ABOUT YOUR WORK HISTORY AFTER

03:46PM 10 OBTAINING YOUR LAST DEGREE FROM BERKELEY?

03:46PM 11 A. SURE. I WORKED AS A DIRECTOR FOR A BIOTECH COMPANY

03:46PM 12 LABORATORY FOR A FEW YEARS.

03:46PM 13 THEN I WORKED AS A DIRECTOR FOR SEVERAL SMALL CLINICAL

03:46PM 14 LABORATORIES. I'VE BEEN DOING THAT FOR -- SINCE THE EARLY

03:46PM 15 '90S.

03:46PM 16 AND I ALSO WORKED AS A DIRECTOR OF DEVELOPMENT FOR A

03:46PM 17 BIOTECH COMPANY IN THE EAST BAY.

03:46PM 18 Q. OKAY. DID YOU WORK FOR A -- AS A LAB DIRECTOR AT A

03:46PM 19 COMPANY CALLED UNILAB?

03:46PM 20 A. I DID.

03:46PM 21 Q. AND WERE YOU THE LABORATORY DIRECTOR AT BAYER REFERENCE

03:46PM 22 TESTING IN THE LATE 1990S?

03:46PM 23 A. YES.

03:46PM 24 Q. AND DID YOU SERVE AS A LABORATORY DIRECTOR AT A COMPANY

03:46PM 25 CALL TETHYS BIOSCIENCES?

03:46PM 1 A. I DID.

03:46PM 2 Q. AND FROM 2000 TO 2015, DID YOU WORK AS A SENIOR DIRECTOR

03:47PM 3 AT A COMPANY CALLED CERUS?

03:47PM 4 A. I DID.

03:47PM 5 Q. HOW DID YOU LEARN ABOUT THERANOS?

03:47PM 6 A. I WAS ASKED BY JERRY HURST, WHO OWNS LABORATORY CONSULTING

03:47PM 7 SERVICES, IF I WOULD BE INTERESTED IN DOING A DIRECTORSHIP FOR

03:47PM 8 THEM.

03:47PM 9 Q. AND AT SOME POINT DID YOU SPEAK WITH SOMEBODY FROM

03:47PM 10 THERANOS ABOUT THAT OPPORTUNITY?

03:47PM 11 A. I DID.

03:47PM 12 Q. AND WHO DID YOU SPEAK WITH?

03:47PM 13 A. I SPOKE WITH SUNNY.

03:47PM 14 Q. OKAY. TELL US ABOUT THAT CONVERSATION, PLEASE.

03:47PM 15 A. IT WAS A LOT OF YEARS AGO AND I DON'T REMEMBER VERY

03:47PM 16 CLEARLY, BUT BASICALLY HE DESCRIBED WHAT THEY WANTED IN THE WAY

03:47PM 17 OF A LAB DIRECTOR AND THAT IT WAS A TEMPORARY POSITION. THEY

03:47PM 18 HAD SOMEONE IN MIND WHO WOULD BECOME DIRECTOR IN TWO TO THREE

03:47PM 19 MONTHS.

03:47PM 20 Q. AND WHAT DID HE SAY ABOUT WHAT THEY WERE LOOKING FOR IN A

03:47PM 21 LAB DIRECTOR?

03:47PM 22 A. IT WAS VERY PART-TIME. IT WAS, LIKE I SAID, VERY

03:47PM 23 TEMPORARY, VERY PART-TIME.

03:47PM 24 AS WITH ANY LAB DIRECTOR, I WOULD NEED TO GO THROUGH AND

03:47PM 25 REVIEW AND APPROVE DOCUMENTS, ALL OF THE SOP'S, ET CETERA.

03:47PM 1 IT WAS LARGELY -- IF WAS NOT EVER BILLED TO BE AN
03:48PM 2 IN-PERSON JOB.

03:48PM 3 Q. OKAY. DID HE MENTION ANYBODY NAMED ADAM ROSENDORFF?
03:48PM 4 A. I DO NOT BELIEVE SO.

03:48PM 5 Q. OKAY. DID MR. BALWANI DESCRIBE ANYTHING ABOUT THE
03:48PM 6 CIRCUMSTANCES OF DR. ROSENDORFF'S DEPARTURE FROM THERANOS?
03:48PM 7 A. NO.

03:48PM 8 Q. OKAY. DID HE IN ANY WAY SUGGEST THAT DR. ROSENDORFF HAD
03:48PM 9 CONCERNS ABOUT THERANOS'S LABORATORY TESTING OR THE PERFORMANCE
03:48PM 10 OF ITS DEVICES?
03:48PM 11 A. NO.

03:48PM 12 MS. WALSH: OBJECTION. LEADING.
03:48PM 13 THE COURT: OVERRULED.

03:48PM 14 BY MR. LEACH:

03:48PM 15 Q. YOUR ANSWER WAS NO?
03:48PM 16 A. CORRECT.

03:48PM 17 Q. OKAY. AFTER SPEAKING WITH MR. BALWANI, DID YOU AGREE TO
03:48PM 18 BECOME THE CO-DIRECTOR OF THERANOS'S LAB?
03:48PM 19 A. YES.

03:48PM 20 Q. AND DID THAT HAPPEN IN LATE 2014?
03:48PM 21 A. YES.

03:48PM 22 Q. WERE YOU EVER ASKED TO VISIT THE LAB?
03:48PM 23 A. NO.

03:48PM 24 Q. DID YOU EVER SET FOOT IN THE LABORATORY?
03:48PM 25 A. NO.

03:48PM 1 Q. DID YOU EVER SEE SOMETHING CALLED AN EDISON DEVICE?

03:48PM 2 A. NO.

03:48PM 3 Q. DID YOU EVER REVIEW ANY DATA GENERATED BY AN EDISON

03:48PM 4 DEVICE?

03:48PM 5 A. NO.

03:48PM 6 Q. DID YOU EVER SEE DATA GENERATED FROM A THERANOS

03:49PM 7 MANUFACTURED BLOOD ANALYZER?

03:49PM 8 A. NO.

03:49PM 9 Q. DID YOU EVER REVIEW ANY DATA GENERATED FROM A THERANOS

03:49PM 10 MANUFACTURED BLOOD ANALYZER?

03:49PM 11 A. NO.

03:49PM 12 Q. IN YOUR INITIAL CALL WITH MR. BALWANI, DID HE TELL YOU

03:49PM 13 THAT THERANOS WAS USING AN ANALYZER THAT IT HAD MANUFACTURED?

03:49PM 14 A. I DO NOT BELIEVE SO.

03:49PM 15 Q. DID HE EVER TELL YOU THAT THEY WERE USING ANY THERANOS

03:49PM 16 MANUFACTURED ANALYZER IN THE CLINICAL LAB?

03:49PM 17 A. NOT THAT I RECALL, NO.

03:49PM 18 Q. IN THIS TIME PERIOD, END OF 2014 THROUGH JUNE OF 2015 WHEN

03:49PM 19 YOU RESIGNED, CAN YOU SUMMARIZE FOR US WHAT YOU WERE CALLED TO

03:49PM 20 DO?

03:49PM 21 A. ALMOST EXCLUSIVELY I WAS CALLED ON TO REVIEW AND APPROVE

03:49PM 22 DOCUMENTS.

03:49PM 23 Q. OKAY. AND DID THOSE DOCUMENTS INCLUDE SOP'S?

03:49PM 24 A. YES.

03:49PM 25 Q. IS THAT STANDARD OPERATING PROCEDURES?

03:49PM 1 A. CORRECT.

03:49PM 2 Q. AND DID YOU REVIEW ANY SOP'S RELATING TO THE EDISON?

03:50PM 3 A. NO.

03:50PM 4 Q. DID YOU REVIEW ANY SOP'S RELATING TO ANY OTHER THERANOS

03:50PM 5 MANUFACTURED ANALYZER?

03:50PM 6 A. NOT ANALYZER, NO.

03:50PM 7 Q. DID YOU REVIEW ANY VALIDATION DOCUMENTS RELATING TO THE

03:50PM 8 EDISON?

03:50PM 9 A. NO.

03:50PM 10 Q. DID YOU REVIEW ANY VERIFICATION DOCUMENTS RELATING TO THE

03:50PM 11 EDISON?

03:50PM 12 A. NO.

03:50PM 13 Q. DID YOU REVIEW ANY VALIDATION OR VERIFICATION DOCUMENTS

03:50PM 14 FOR ANY OTHER THERANOS MANUFACTURED ANALYZER?

03:50PM 15 A. NO.

03:50PM 16 Q. BASED ON THE SOP'S THAT YOU WERE GIVEN, DID THEY RELATE

03:50PM 17 EXCLUSIVELY TO FDA APPROVED DEVICES?

03:50PM 18 A. THE VAST MAJORITY OF THEM DID. THERE WERE A FEW LAB

03:50PM 19 DEVELOPED TESTS FOR MICROBIOLOGICAL THINGS, ID'ING BACTERIA IN

03:50PM 20 STOOLS AND A SENSITIVITY ASSAY, I BELIEVE.

03:50PM 21 Q. IS THAT A RELATIVELY SMALL CATEGORY THAT YOU'RE

03:51PM 22 DESCRIBING?

03:51PM 23 A. YES.

03:51PM 24 Q. PUTTING ASIDE THAT RELATIVELY SMALL CATEGORY, DID YOU

03:51PM 25 REVIEW ANY SOP'S RELATING TO -- WERE THE SOP'S THAT YOU

03:51PM 1 REVIEWED RELATED EXCLUSIVELY TO FDA APPROVED ANALYZERS?

03:51PM 2 A. YES.

03:51PM 3 Q. AND BASED ON THE SOP'S THAT YOU WERE GIVEN, DID YOU HAVE

03:51PM 4 THE IMPRESSION THAT THERANOS WAS DOING ANYTHING OTHER THAN

03:51PM 5 RUNNING BLOOD TESTS ON FDA APPROVED ANALYZERS?

03:51PM 6 A. NO.

03:51PM 7 Q. WHAT -- IN WHAT FORM DID YOU RECEIVE THE SOP'S? HOW DID

03:51PM 8 THEY COME TO YOU?

03:51PM 9 A. ELECTRONICALLY VIA DOCUSIGN.

03:51PM 10 Q. AND WERE YOU ABLE TO EDIT THEM?

03:51PM 11 A. NO.

03:51PM 12 Q. WAS IT ESSENTIALLY, HERE'S THE DOCUMENT, SIGN HERE?

03:51PM 13 A. UH-HUH.

03:51PM 14 THE COURT: IS THAT YES?

03:51PM 15 THE WITNESS: YES. SORRY.

03:51PM 16 MR. LEACH: THANK YOU, YOUR HONOR.

03:51PM 17 Q. WE NEED AUDIBLE RESPONSES SO WE HAVE A GOOD RECORD.

03:51PM 18 A. SORRY.

03:51PM 19 Q. DID YOU EXERCISE ANY DECISION MAKING IN WHAT WAS SENT TO

03:51PM 20 YOU?

03:51PM 21 A. NO.

03:51PM 22 Q. IN THIS TIME PERIOD, LATE 2014 THROUGH JUNE OF 2015, WHO

03:52PM 23 AT THERANOS DID YOU HAVE CONTACT WITH?

03:52PM 24 A. BASICALLY I HAD CONTACT WITH THE WOMAN WHO SENT ME THE

03:52PM 25 DOCUMENTS, MICHELLE LEE.

03:52PM 1 Q. IS THAT YOUR MEMORY?

03:52PM 2 A. THAT'S MY MEMORY. IT MIGHT BE NOT EXACTLY CORRECT.

03:52PM 3 Q. OKAY. OTHER THAN MICHELLE LEE WHO SENT YOU THE DOCUMENTS,

03:52PM 4 DID YOU HAVE --

03:52PM 5 A. NO.

03:52PM 6 Q. -- CONTACT WITH ANYBODY -- WE NEED TO SPEAK ONE AT A TIME.

03:52PM 7 A. NO.

03:52PM 8 Q. AND LET ME JUST GET MY FULL QUESTION OUT IF I COULD.

03:52PM 9 OTHER THAN MS. LEE, DID YOU SPEAK TO ANYBODY ELSE AT

03:52PM 10 THERANOS?

03:52PM 11 A. NO.

03:52PM 12 Q. YOU HAD A PHONE CALL WITH MR. BALWANI BEFORE YOU TOOK THE

03:52PM 13 POSITION?

03:52PM 14 A. YES.

03:52PM 15 Q. OKAY. AT SOME POINT DID YOU HAVE SOME ADDITIONAL CONTACT

03:52PM 16 WITH HIM?

03:52PM 17 A. I DO NOT BELIEVE SO. NOT DIRECTLY.

03:53PM 18 Q. OKAY. DID HE EXPLAIN TO YOU ANY ISSUES THAT HAD COME UP

03:53PM 19 IN THE CLINICAL LABORATORY BEFORE YOU HAD ARRIVED?

03:53PM 20 A. NO, JUST THAT THEY WERE IN TEMPORARY NEED OF A DIRECTOR.

03:53PM 21 Q. OKAY. BESIDES MR. BALWANI AND MS. LEE, DID YOU HAVE

03:53PM 22 CONTACT WITH ANYBODY ELSE AT THERANOS?

03:53PM 23 A. NO.

03:53PM 24 Q. PRIOR TO RESIGNED IN JUNE OF 2015, DID YOU HAVE ANY

03:53PM 25 CONTACT WITH SUNIL DHAWAN?

03:53PM 1 A. NO.

03:53PM 2 Q. DO YOU KNOW WHO HE IS?

03:53PM 3 A. ONLY FROM HEARING HIS NAME PREVIOUSLY.

03:53PM 4 Q. OKAY. PRIOR TO, LET'S SAY ABOUT A YEAR AGO --

03:53PM 5 A. NO.

03:53PM 6 Q. -- HAD YOU HEARD OF SUNIL DHAWAN?

03:53PM 7 A. NO.

03:53PM 8 Q. OKAY. DID YOU HAVE ANY CONTACT WITH YOUR CO-LABORATORY

03:53PM 9 DIRECTOR?

03:53PM 10 A. NO.

03:53PM 11 Q. DID YOU HAVE ANY DISCUSSIONS ABOUT HOW TO DIVIDE

03:53PM 12 RESPONSIBILITIES WITH YOUR CO-LAB DIRECTOR?

03:53PM 13 A. NO.

03:53PM 14 Q. DID YOU HAVE ANY CONTACT WITH ELIZABETH HOLMES?

03:53PM 15 A. NO.

03:53PM 16 Q. DID YOU EVER MEET ELIZABETH HOLMES?

03:53PM 17 A. NO.

03:53PM 18 Q. DID YOU HAVE ANY CONTACT WITH THE TECHNICAL SUPERVISOR?

03:53PM 19 A. NO.

03:53PM 20 Q. OKAY. YOU'RE FAMILIAR WITH THE TERM "TECHNICAL

03:54PM 21 SUPERVISOR"?

03:54PM 22 A. YES.

03:54PM 23 Q. OKAY. BUT YOU DIDN'T HAVE ANY CONTACT WITH THE TECHNICAL

03:54PM 24 SUPERVISOR AT THERANOS?

03:54PM 25 A. NO, I DID NOT.

03:54PM 1 Q. OKAY. AND DID YOU HAVE ANY CONTACT WITH THE GENERAL
03:54PM 2 SUPERVISOR?

03:54PM 3 A. NO, I DID NOT.

03:54PM 4 Q. OKAY. DID YOU DELEGATE ANY RESPONSIBILITIES TO ANYBODY?

03:54PM 5 A. I DID SIGN ONE DELEGATION OF RESPONSIBILITIES FOR A
03:54PM 6 QUALITY MANAGER.

03:54PM 7 Q. OKAY. AND PUTTING ASIDE THAT ONE DELEGATION, DID YOU
03:54PM 8 DELEGATE RESPONSIBILITIES TO ANYBODY ELSE?

03:54PM 9 A. NO.

03:54PM 10 Q. OKAY. DID YOU EVER SPEAK TO ANY DOCTORS?

03:54PM 11 A. NO.

03:54PM 12 Q. DID YOU EVER SPEAK TO ANY PATIENTS?

03:54PM 13 A. NO.

03:54PM 14 Q. WERE YOU EVER ALERTED TO ANY CLINICAL OR CRITICAL VALUES?

03:54PM 15 A. NO, I WAS NOT.

03:54PM 16 Q. OKAY. WHAT IS A CRITICAL VALUE?

03:54PM 17 A. IT'S A VALUE THAT IS OUTSIDE OF THE NORMAL RANGE.

03:54PM 18 Q. WERE YOU EVER ALERTED TO OR DID YOU REVIEW ANY QUALITY
03:54PM 19 CONTROL DATA?

03:54PM 20 A. NO.

03:54PM 21 Q. DID YOU RECEIVE ANY REPORTS ABOUT THE ACTIVITIES OF THE
03:54PM 22 LAB?

03:54PM 23 A. NO.

03:54PM 24 Q. DID YOU ORDER ANY TESTING BE BROUGHT UP ON A PARTICULAR
03:55PM 25 THERANOS DEVICE?

03:55PM 1 A. NO.

03:55PM 2 Q. AND DID YOU EVER ORDER THAT TESTING BE DISCONTINUED ON A

03:55PM 3 THERANOS MANUFACTURED DEVICE?

03:55PM 4 A. NO.

03:55PM 5 Q. DID YOU REVIEW ANY PROFICIENCY TESTING FOR LDT'S?

03:55PM 6 A. NOT THAT I RECALL.

03:55PM 7 Q. OKAY. DID YOU REVIEW ANY PROFICIENCY TESTING FOR TESTS

03:55PM 8 RUN ON THE THERANOS MANUFACTURED ANALYZER?

03:55PM 9 A. NO.

03:55PM 10 Q. DID YOU EVER DISCUSS THE CONCEPT OF ALTERNATIVE ASSESSMENT

03:55PM 11 OF PROFICIENCY WITH ANYBODY AT THERANOS?

03:55PM 12 A. NO.

03:55PM 13 Q. DID YOU KNOW THAT THERANOS HAD AN AAP PROGRAM?

03:55PM 14 A. NO, NOT THAT I RECALL SEEING.

03:55PM 15 Q. I'D LIKE TO DISPLAY FOR YOU WHAT IS IN EVIDENCE, WITH THE

03:55PM 16 COURT'S PERMISSION, AS EXHIBIT 4533.

03:55PM 17 THE COURT: YES.

03:55PM 18 BY MR. LEACH:

03:55PM 19 Q. DO YOU SEE THIS APPEARS TO BE A MEMO DATED

03:55PM 20 SEPTEMBER 23RD, 2015 --

03:55PM 21 A. YES.

03:55PM 22 Q. -- DR. SAWYER?

03:56PM 23 A. YES.

03:56PM 24 Q. AND THIS IS NOT SOMETHING THAT YOU REVIEWED DURING YOUR

03:56PM 25 TIME AT THERANOS?

03:56PM 1 A. NO. IT HAD TO BE AFTER MY TIME AT THERANOS.

03:56PM 2 Q. OKAY. SOMETIME WITHIN THE LAST YEAR IS THE FIRST TIME

03:56PM 3 THAT YOU SAW THIS DOCUMENT?

03:56PM 4 A. YES.

03:56PM 5 Q. OKAY. AND THERE'S A LINE AT THE TOP THAT SAYS,

03:56PM 6 "ADDITIONALLY, THE FOLLOWING IS THE LIST OF THE LABORATORY

03:56PM 7 DEVELOPED TESTS THAT THERANOS TESTED ON THERANOS DEVICE, ALSO

03:56PM 8 CALLED THE THERANOS SAMPLE PROCESSING UNITS, ALONG WITH THE

03:56PM 9 TIME PERIODS WHEN THOSE TESTS WERE RUN."

03:56PM 10 DO YOU SEE THAT LANGUAGE?

03:56PM 11 A. I DO.

03:56PM 12 Q. AND THEN THERE'S A LIST OF 12 ASSAYS DOWN AT THE BOTTOM.

03:56PM 13 DO YOU SEE THOSE?

03:56PM 14 A. I DO.

03:56PM 15 Q. AND THERE'S SOME DATES THAT COVER YOUR TENURE, AT LEAST IN

03:56PM 16 THE END DATES.

03:56PM 17 DO YOU SEE THE FIRST ONE, VITAMIN D, THERE'S THE DATE

03:56PM 18 MARCH 10TH, 2015 IN THE ROW AT THE TOP?

03:56PM 19 A. I DO.

03:56PM 20 Q. OKAY. AND YOU HAD NO UNDERSTANDING THAT THERANOS WAS

03:56PM 21 RUNNING AN LDT RELATING TO VITAMIN D; CORRECT?

03:56PM 22 A. NO, I DID NOT.

03:57PM 23 Q. AND YOU HAD NO UNDERSTANDING THAT THERANOS WAS USING ITS

03:57PM 24 OWN MANUFACTURED ANALYZER FOR VITAMIN D DURING YOUR TENURE?

03:57PM 25 A. CORRECT.

03:57PM 1 Q. AND WOULD THAT ALSO APPLY TO ALL OF THE OTHER ASSAYS
03:57PM 2 LISTED IN THIS DOCUMENT?
03:57PM 3 A. YES, IT WOULD.
03:57PM 4 Q. OKAY. AND DID ANYBODY CONSULT YOU ABOUT DISCONTINUING USE
03:57PM 5 OF A THERANOS MANUFACTURED ANALYZER FOR THESE ASSAYS?
03:57PM 6 A. NO.
03:57PM 7 Q. LET ME DISPLAY FOR YOU WHAT IS IN EVIDENCE AS
03:57PM 8 EXHIBIT 20575.
03:57PM 9 WITH THE COURT'S PERMISSION?
03:57PM 10 THE COURT: YES.
03:57PM 11 BY MR. LEACH:
03:57PM 12 Q. DO YOU SEE THE TITLE OF THIS DOCUMENT, DR. SAWYER, USE AND
03:57PM 13 MAINTENANCE OF THE IDAHO TECHNOLOGY (BIOFIRE) FILM ARRAY SYSTEM
03:57PM 14 FOR THE IDENTIFICATION OF MICROORGANISMS BY MULTIPLEX PCR."
03:57PM 15 DO YOU SEE THAT LANGUAGE?
03:57PM 16 A. I DO.
03:57PM 17 Q. AND DO YOU SEE YOUR SIGNATURE HALFWAY DOWN THE PAGE?
03:58PM 18 A. I DO.
03:58PM 19 Q. AND THERE'S A DATE OF MAY 5TH, 2015?
03:58PM 20 A. UH-HUH, YES.
03:58PM 21 Q. AND DOES THIS HAVE ANYTHING TO DO WITH A THERANOS
03:58PM 22 MANUFACTURED ANALYZER?
03:58PM 23 A. I DO NOT BELIEVE SO.
03:58PM 24 Q. OKAY. LET ME DISPLAY FOR YOU WHAT IS IN EVIDENCE AS
03:58PM 25 EXHIBIT 10525.

03:58PM 1 DO YOU SEE YOUR SIGNATURE DOWN AT THE BOTTOM, DR. SAWYER?

03:58PM 2 A. I DO.

03:58PM 3 Q. OKAY. AND THE DATE IS JANUARY 11TH, 2015?

03:58PM 4 A. YES.

03:58PM 5 Q. AND DO YOU SEE THE TITLE IS MVP SUMMARY ADVIA 2400?

03:58PM 6 A. YES.

03:58PM 7 Q. IS THAT AN FDA APPROVED DEVICE?

03:58PM 8 A. YES.

03:58PM 9 Q. AND DO YOU BELIEVE THAT THIS DOCUMENT RELATES TO

03:58PM 10 THERANOS'S USE OF TECHNOLOGY APPROVED BY THE FDA?

03:58PM 11 A. YES.

03:58PM 12 Q. LET'S LOOK BRIEFLY AT 10526, WHICH IS IN EVIDENCE.

03:59PM 13 DO YOU SEE YOUR SIGNATURE ON THIS DOCUMENT?

03:59PM 14 A. YES.

03:59PM 15 Q. AND DID YOU HAVE ANY CONVERSATIONS WITH DR. DHAWAN ABOUT

03:59PM 16 THIS PARTICULAR DOCUMENT?

03:59PM 17 A. NO.

03:59PM 18 Q. OKAY. YOU DIDN'T KNOW WHO DR. DHAWAN WAS AT THE TIME?

03:59PM 19 A. CORRECT.

03:59PM 20 Q. AND YOU HAD NO CONVERSATIONS WITH HIM ABOUT HOW TO DIVIDE

03:59PM 21 RESPONSIBILITIES?

03:59PM 22 A. CORRECT.

03:59PM 23 Q. OKAY. AND THE TITLE OF THIS IS ROCHE LIGHTCYCLER

03:59PM 24 SIMPLIFIED PROTOCOL.

03:59PM 25 DO YOU SEE THAT?

03:59PM 1 A. YES.

03:59PM 2 Q. AND IS THAT A DEVICE APPROVED BY THE FDA?

03:59PM 3 A. YES.

03:59PM 4 Q. AND DID YOU EVER --

03:59PM 5 WE CAN TAKE THAT DOWN, MS. WACHS.

03:59PM 6 DID YOU EVER ASK FOR A LIST OF LAB PERSONNEL WITHIN

03:59PM 7 THERANOS?

03:59PM 8 A. I DID.

03:59PM 9 Q. OKAY. DID YOU EVER GET THAT?

03:59PM 10 A. NO.

03:59PM 11 Q. WAS THAT A MATTER OF FRUSTRATION TO YOU?

03:59PM 12 A. IT WAS, YES.

03:59PM 13 Q. OKAY. EXPLAIN THAT.

03:59PM 14 A. I FELT THAT I NEEDED TO KNOW WHO -- IT WOULD BE HELPFUL TO

03:59PM 15 KNOW WHO THE TECHNICAL SUPERVISOR WAS, WHO THE GENERAL

04:00PM 16 SUPERVISOR WAS, ET CETERA.

04:00PM 17 Q. AND YOU RESIGNED IN JUNE OF 2015?

04:00PM 18 A. YES.

04:00PM 19 Q. AT THE TIME THAT YOU RESIGNED, WERE YOU SATISFIED WITH THE

04:00PM 20 LEVEL OF INFORMATION THAT YOU WERE GETTING?

04:00PM 21 A. NO, I REALLY WASN'T.

04:00PM 22 Q. OKAY. EXPLAIN THAT.

04:00PM 23 A. IF I WERE GOING TO CONTINUE -- THE LEVEL OF INFORMATION I

04:00PM 24 WAS GETTING WAS FINE FOR SOMETHING THAT I WAS GOING TO DO FOR

04:00PM 25 TWO MONTHS BASICALLY JUST TO KEEP THE LAB LEGAL.

04:00PM 1 BUT IF I WAS GOING TO CONTINUE DOING THIS, I NEEDED A MUCH
04:00PM 2 BETTER CONNECTION TO THE PEOPLE WHO WERE ACTUALLY DOING THE LAB
04:00PM 3 WORK.

04:00PM 4 Q. AND THE INFORMATION THAT YOU WERE GETTING RELATED
04:00PM 5 VIRTUALLY EXCLUSIVELY TO FDA APPROVED DEVICES?

04:00PM 6 A. YES.

04:00PM 7 Q. THANK YOU DR. SAWYER.

04:00PM 8 THANK YOU, YOUR HONOR. I HAVE NO FURTHER QUESTIONS.

04:00PM 9 THE COURT: MS. WALSH, DO YOU WANT TO START YOUR
04:00PM 10 EXAMINATION?

04:00PM 11 MS. WALSH: I CAN START, YOUR HONOR.

04:01PM 12 THE COURT: SURE.

04:01PM 13 MS. WALSH: MAY I APPROACH, YOUR HONOR?

04:01PM 14 THE COURT: YES.

04:01PM 15 MS. WALSH: (HANDING.)

04:01PM 16 MAY I APPROACH DR. SAWYER AS WELL?

04:01PM 17 THE COURT: YES. YES. THANK YOU.

04:02PM 18 **CROSS-EXAMINATION**

04:02PM 19 BY MS. WALSH:

04:02PM 20 Q. ALL RIGHT. GOOD AFTERNOON, DR. SAWYER.

04:02PM 21 A. GOOD AFTERNOON.

04:02PM 22 Q. I JUST WANT TO FIRST START WITH YOUR PROFESSIONAL
04:02PM 23 BACKGROUND.

04:02PM 24 A. UH-HUH.

04:02PM 25 Q. YOU ARE A PROFESSIONAL LAB DIRECTOR; RIGHT?

04:02PM 1 A. YES.

04:02PM 2 Q. AND BEFORE WORKING AT THERANOS, YOU SERVED AS A LAB

04:02PM 3 DIRECTOR IN MULTIPLE LABS; RIGHT?

04:02PM 4 A. CORRECT.

04:02PM 5 Q. AND SOMETIMES YOU WERE A LAB DIRECTOR FOR SEVERAL

04:02PM 6 DIFFERENT LABS AT ONCE; CORRECT?

04:02PM 7 A. YES.

04:02PM 8 Q. AND YOU SERVED -- I THINK MR. LEACH ASKED YOU ABOUT THIS.

04:02PM 9 YOU SERVED AS A LAB DIRECTOR FOR SEVERAL SMALL CLINICAL LABS IN

04:02PM 10 SAN JOSE AT SOME POINT IN YOUR CAREER; IS THAT RIGHT?

04:02PM 11 A. CORRECT.

04:02PM 12 Q. YEAH. AND YOU WORKED AS A PUBLIC HEALTH MICROBIOLOGIST

04:02PM 13 FOR CADPH; CORRECT?

04:03PM 14 A. YES.

04:03PM 15 Q. AND YOU SERVED AS A LAB DIRECTOR FOR BAYER DIAGNOSTICS; IS

04:03PM 16 THAT RIGHT?

04:03PM 17 A. YES.

04:03PM 18 Q. AND YOU'RE QUALIFIED TO SERVE AS A LAB DIRECTOR; RIGHT?

04:03PM 19 A. YES.

04:03PM 20 Q. YOU HAVE A -- YOU SAID YOU HAVE A BACHELOR'S IN

04:03PM 21 MICROBIOLOGY; RIGHT?

04:03PM 22 A. YES.

04:03PM 23 Q. AND A MASTERS IN PUBLIC HEALTH?

04:03PM 24 A. YES.

04:03PM 25 Q. AND A PH.D. PUBLIC HEALTH AS WELL?

04:03PM 1 A. YES.

04:03PM 2 Q. AND YOU'RE LICENSED AS A CLINICAL LAB SCIENTIST; IS THAT

04:03PM 3 RIGHT?

04:03PM 4 A. ACTUALLY I'M LICENSED AS A BIOANALYST, WHICH SUPERSEDES A

04:03PM 5 CLINICAL LABORATORY SCIENTIST LICENSE, AND WHICH IS WHAT ALLOWS

04:03PM 6 ME TO DIRECT LABS.

04:03PM 7 Q. OKAY. AND YOU TESTIFIED DURING YOUR DIRECT EXAMINATION

04:03PM 8 THAT YOU LEARNED ABOUT THERANOS THROUGH JERRY HURST; IS THAT

04:04PM 9 RIGHT?

04:04PM 10 A. YES.

04:04PM 11 Q. AND YOU STARTED WORKING WITH MR. HURST IN 2013; IS THAT

04:04PM 12 CORRECT?

04:04PM 13 A. ACTUALLY, I STARTED WORKING WITH MR. HURST IN 1988.

04:04PM 14 Q. OKAY.

04:04PM 15 A. I STARTED DIRECTING LABS IN ASSOCIATION WITH HIM IN

04:04PM 16 PROBABLY 2013, YEAH.

04:04PM 17 Q. SO YOU'VE KNOWN HIM FOR A LONG TIME?

04:04PM 18 A. YES.

04:04PM 19 Q. AND MR. HURST RUNS A LAB CONSULTING COMPANY; RIGHT?

04:04PM 20 A. YES.

04:04PM 21 Q. AND THAT -- AND YOU MENTIONED THIS ON YOUR DIRECT AS WELL.

04:04PM 22 THE NAME OF THAT COMPANY IS LABORATORY CONSULTING SERVICES; IS

04:04PM 23 THAT RIGHT?

04:04PM 24 A. YES.

04:04PM 25 Q. AND SO COMPANIES HIRE MR. HURST TO HELP THEM SET UP THEIR

04:04PM 1 LAB SOMETIMES; RIGHT?

04:04PM 2 A. YES.

04:04PM 3 Q. AND HE CAN ALSO HELP THEM WITH THE LAB LICENSING PROCESS;

04:04PM 4 CORRECT?

04:04PM 5 A. YES.

04:04PM 6 Q. AND HE ALSO PROVIDES CONSULTING SERVICES IN KEEPING LABS

04:04PM 7 COMPLIANT WITH THE REGULATIONS; IS THAT RIGHT?

04:04PM 8 A. YES.

04:04PM 9 Q. AND HE'S BEEN DOING THAT CONSULTING WORK FOR QUITE A

04:05PM 10 WHILE; IS THAT FAIR TO SAY?

04:05PM 11 A. YES. I DON'T REMEMBER WHEN HE STARTED EXACTLY.

04:05PM 12 Q. OKAY. AND IT'S BEEN FOR DECADES THOUGH, HASN'T IT?

04:05PM 13 A. AT THIS POINT PROBABLY, YEAH.

04:05PM 14 Q. OKAY. AND HE CONSULTS WITH A LOT OF DIFFERENT LABS IN THE

04:05PM 15 AREA; RIGHT?

04:05PM 16 A. TO THE BEST OF MY KNOWLEDGE.

04:05PM 17 Q. OKAY. AND HE'S CONSIDERED AN EXPERT IN THE FIELD OF LAB

04:05PM 18 CONSULTING SERVICES, ISN'T HE?

04:05PM 19 MR. LEACH: OBJECTION. SPECULATION.

04:05PM 20 MS. WALSH: WELL, I CAN LAY SOME FOUNDATION IF YOU

04:05PM 21 WANT.

04:05PM 22 THE COURT: SURE.

04:05PM 23 BY MS. WALSH:

04:05PM 24 Q. YOU'VE WORKED CLOSELY WITH MR. HURST; RIGHT?

04:05PM 25 A. I HAVE IN CERTAIN ASPECTS OF HIS BUSINESS, YES.

04:05PM 1 Q. AND HIS BUSINESS IS ADVISING LABS ON HOW TO BE COMPLIANT;
04:05PM 2 RIGHT?
04:05PM 3 A. YES.
04:05PM 4 Q. HOW TO GET LICENSES; RIGHT?
04:05PM 5 A. YES, THAT'S PART OF IT, YEAH.
04:05PM 6 Q. YEAH. AND HOW TO PREPARE FOR AUDITS; CORRECT?
04:05PM 7 A. CORRECT.
04:05PM 8 Q. AND YOU HAVE GREAT RESPECT FOR MR. HURST'S ABILITIES TO DO
04:06PM 9 THAT; RIGHT?
04:06PM 10 A. I DO.
04:06PM 11 Q. HE HAS ENORMOUS EXPERIENCE IN THIS FIELD?
04:06PM 12 A. YES.
04:06PM 13 Q. AND IS IT FAIR TO SAY THAT YOU WOULD CONSIDER HIM AN
04:06PM 14 EXPERT IN THAT AREA?
04:06PM 15 A. I WOULD.
04:06PM 16 Q. IN FACT, HE WAS -- BEFORE HE STARTED THIS BUSINESS, HE WAS
04:06PM 17 PREVIOUSLY A CALIFORNIA DEPARTMENT OF HEALTH INSPECTOR, WASN'T
04:06PM 18 HE?
04:06PM 19 A. YES, HE WAS.
04:06PM 20 Q. AND YOU BOTH WORKED TOGETHER AT THE CALIFORNIA DEPARTMENT
04:06PM 21 OF HEALTH?
04:06PM 22 A. YES, BUT NOT IN THE LABORATORY FIELD SERVICES DIVISION. I
04:06PM 23 HAVE NEVER WORKED FOR THEM.
04:06PM 24 Q. OKAY. AND PART OF WHAT MR. HURST ALSO DOES IS THAT HE
04:06PM 25 HELPS LABS WHO HAVE A NEED FOR PART-TIME LAB DIRECTORS; IS THAT

04:06PM 1 RIGHT?

04:06PM 2 A. HE DOES, YES.

04:06PM 3 Q. AND HE IS SOMEONE THAT LABS CALL IF THEY NEED A LAB

04:07PM 4 DIRECTOR ON A TEMPORARY BASIS; CORRECT?

04:07PM 5 A. OR A PERMANENT BASIS, YES.

04:07PM 6 Q. OR A PERMANENT. OKAY.

04:07PM 7 AND THAT'S HOW YOU GOT THE POSITION AT THERANOS; CORRECT?

04:07PM 8 A. CORRECT. CORRECT.

04:07PM 9 Q. AND YOU KNEW, DIDN'T YOU, AT THE TIME THAT THERANOS HAD

04:07PM 10 WORKED WITH MR. HURST'S COMPANY PRIOR TO YOUR JOINING THERANOS;

04:07PM 11 IS THAT RIGHT?

04:07PM 12 A. I DID.

04:07PM 13 Q. MR. HURST HAD HELPED THERANOS IN THE PAST; CORRECT?

04:07PM 14 A. I DID NOT KNOW WHAT HE DID, NO.

04:07PM 15 I JUST KNEW THAT HE HAD WORKED WITH THEM.

04:07PM 16 Q. IN THE, IN THE AREAS THAT YOU'VE DESCRIBED WERE HIS

04:07PM 17 EXPERTISE; IS THAT FAIR?

04:07PM 18 A. I SUPPOSE IT IS. I REALLY DON'T HAVE ANY IDEA WHAT HE DID

04:07PM 19 WITH THEM.

04:07PM 20 Q. OKAY. BUT YOU KNEW MR. HURST WORKED WITH THERANOS --

04:07PM 21 A. YES.

04:07PM 22 Q. -- AND MR. HURST'S LABORATORY CONSULTING SERVICES COMPANY;

04:07PM 23 RIGHT?

04:07PM 24 A. YEAH.

04:07PM 25 MR. LEACH: OBJECTION, YOUR HONOR. 602, 801.

04:08PM 1 THE COURT: WELL, YOU'RE ASKING IF SHE JUST HAS
04:08PM 2 KNOWLEDGE IF HE WAS CONNECTED OR WORKED WITH THEM?
04:08PM 3 MS. WALSH: YES, YOUR HONOR.
04:08PM 4 THE COURT: HER ANSWER WAS YES. THAT CAN REMAIN.
04:08PM 5 YOU CAN ASK ANOTHER QUESTION.
04:08PM 6 WE'RE GOING TO BREAK AT A QUARTER PAST THE HOUR, LADIES
04:08PM 7 AND GENTLEMEN.
04:08PM 8 BY MS. WALSH:
04:08PM 9 Q. OKAY. SO MR. HURST CONTACTED YOU; CORRECT?
04:08PM 10 A. YES, HE DID.
04:08PM 11 Q. AND HE SAID, IN ESSENCE, THAT THERE'S A PART-TIME POSITION
04:08PM 12 THAT I WANT TO SEE IF YOU'RE INTERESTED IN; RIGHT?
04:08PM 13 A. HE DID. HE ACTUALLY CONTACTED TWO OF US AND ASKED IF
04:08PM 14 EITHER ONE OF US WAS INTERESTED.
04:08PM 15 Q. OKAY. AND YOU SAID YOU WERE INTERESTED; RIGHT?
04:08PM 16 A. I SAID I WOULD DO IT IF THE OTHER PERSON DIDN'T WANT TO.
04:08PM 17 Q. OKAY. OKAY.
04:08PM 18 SO WHEN YOU CAME ON BOARD TO THERANOS, YOU WERE HIRED
04:08PM 19 PURSUANT TO A CONSULTING AGREEMENT; RIGHT?
04:08PM 20 A. YES.
04:08PM 21 Q. AND THAT AGREEMENT WAS BETWEEN THERANOS AND MR. HURST'S
04:08PM 22 COMPANY; CORRECT?
04:08PM 23 A. CORRECT.
04:08PM 24 Q. AND SO YOU WERE A CONSULTANT, NOT A FULL-TIME EMPLOYEE;
04:09PM 25 RIGHT?

04:09PM 1 A. CORRECT.

04:09PM 2 Q. AND THE DATE OF THE CONSULTING AGREEMENT WAS

04:09PM 3 NOVEMBER 19TH, 2014.

04:09PM 4 DOES THAT SOUND RIGHT?

04:09PM 5 A. THAT SOUNDS APPROXIMATELY CORRECT, YES.

04:09PM 6 Q. OKAY. AND YOU TESTIFIED ON DIRECT THAT YOU KNEW IT WAS A

04:09PM 7 PART-TIME POSITION; RIGHT?

04:09PM 8 A. CORRECT.

04:09PM 9 Q. AND IT WAS GOING TO BE TEMPORARY FOR A FEW MONTHS; RIGHT?

04:09PM 10 A. CORRECT.

04:09PM 11 Q. OKAY. OKAY.

04:10PM 12 SO YOU TESTIFIED ABOUT A CONVERSATION THAT YOU HAD WITH

04:10PM 13 MR. BALWANI ABOUT THE POSITION BEFORE YOU TOOK THE POSITION;

04:10PM 14 RIGHT?

04:10PM 15 A. YES.

04:10PM 16 Q. AND YOU SAID DURING THAT CONVERSATION -- YOU UNDERSTOOD

04:10PM 17 FROM THE CONVERSATION THAT THE ROLE WAS VERY TEMPORARY; RIGHT?

04:10PM 18 A. CORRECT.

04:10PM 19 Q. AND IT WAS PART -- IT WAS TWO TO THREE MONTHS. THAT'S

04:10PM 20 WHAT YOU ANTICIPATED; RIGHT?

04:10PM 21 A. YES.

04:10PM 22 Q. AND ALSO THAT MR. BALWANI HAD A NEW LAB DIRECTOR WHO WAS

04:10PM 23 GOING TO COME ON BOARD; RIGHT?

04:10PM 24 A. CORRECT.

04:10PM 25 Q. AND THAT NEW LAB DIRECTOR WAS GOING TO COME ON BOARD IN

04:10PM 1 THE SPRING OF 2015; RIGHT?

04:10PM 2 A. MY UNDERSTANDING WAS THAT THE NEW LAB DIRECTOR WOULD COME

04:10PM 3 ON BOARD IN TWO TO THREE MONTHS.

04:10PM 4 Q. OKAY.

04:10PM 5 A. SO THAT WOULD --

04:10PM 6 Q. TWO --

04:10PM 7 A. TWO TO THREE MONTHS. SO THAT WOULD MAKE IT LATE WINTER,

04:10PM 8 EARLY SPRING.

04:10PM 9 Q. OKAY. AND MR. BALWANI SAID THAT NEW LAB DIRECTOR WAS A

04:10PM 10 PERSON NAMED SURAJ SAKSENA; CORRECT?

04:10PM 11 A. NO. I DID NOT HAVE A NAME.

04:10PM 12 Q. YOU JUST KNEW THERE WAS GOING TO BE A NEW LAB DIRECTOR?

04:11PM 13 A. YES.

04:11PM 14 Q. OKAY. AND THE NUMBER OF HOURS YOU WERE GOING TO WORK WAS

04:11PM 15 GOING TO BE ABOUT FIVE HOURS PER WEEK?

04:11PM 16 DOES THAT SOUND RIGHT?

04:11PM 17 A. IT COULD BE. HOWEVER MANY IT TAKES TO GET THROUGH

04:11PM 18 DOCUMENTS. THAT'S PROBABLY WHAT I SPENT, FIVE TO TEN.

04:11PM 19 Q. OKAY. AND THAT WAS COMMUNICATED TO YOU BY MR. BALWANI IN

04:11PM 20 THAT INITIAL CALL?

04:11PM 21 A. I DON'T RECALL ONE WAY OR THE OTHER.

04:11PM 22 Q. OKAY. AND YOU KNEW THAT YOU WERE NOT GOING TO BE REQUIRED

04:11PM 23 TO BE ON SITE AT THERANOS; RIGHT?

04:11PM 24 A. CORRECT.

04:11PM 25 Q. AND YOU HAD DONE THAT BEFORE, WORKED NOT ON SITE AT

04:11PM 1 DIFFERENT LABS; RIGHT?

04:11PM 2 A. THIS WAS THE FIRST TIME THAT I HAD NOT EVER BEEN ON SITE.

04:11PM 3 I HAVE CERTAINLY WORKED NOT ON SITE. MOST DOCUMENT REVIEW

04:11PM 4 IS DONE OFF SITE.

04:11PM 5 BUT I AM GENERALLY ALSO ON SITE AT THE LABS PART-TIME.

04:11PM 6 Q. OKAY. AND YOU, AS YOU SAID, I THINK EARLIER, YOU HAD

04:12PM 7 WORKED AT MULTIPLE LABS BEFORE; RIGHT?

04:12PM 8 A. CORRECT.

04:12PM 9 Q. AND YOU HAD WORKED PART-TIME AT DIFFERENT LABS; CORRECT?

04:12PM 10 A. CORRECT.

04:12PM 11 Q. AND THERE'S NOTHING WRONG WITH DOING THAT; RIGHT?

04:12PM 12 A. TRUE.

04:12PM 13 Q. THE REGULATIONS ALLOW LAB DIRECTORS TO DO THAT; RIGHT?

04:12PM 14 A. YES.

04:12PM 15 Q. OKAY. OKAY.

04:12PM 16 AND THEN YOU MENTIONED A DELEGATION THAT YOU MADE. YOU

04:12PM 17 SAID THAT YOU, YOU MADE ONE DELEGATION DURING YOUR TIME AT

04:12PM 18 THERANOS; IS THAT RIGHT?

04:12PM 19 A. CORRECT.

04:12PM 20 Q. AND A DELEGATION IS IMPORTANT FOR A LAB DIRECTOR

04:12PM 21 BECAUSE -- ESPECIALLY IF YOU CAN'T BE THERE ALL OF THE TIME; IS

04:12PM 22 THAT FAIR?

04:12PM 23 A. YES. IT'S EFFECTIVELY A JOB DESCRIPTION, DELEGATING THE

04:12PM 24 AUTHORITIES WITHIN THAT JOB DESCRIPTION TO THE PERSON.

04:12PM 25 Q. OKAY. AND SO YOU, AS LAB DIRECTOR, DELEGATE WHATEVER IS

04:12PM 1 DESCRIBED TO ANOTHER INDIVIDUAL WHO WORKED AT THE LAB; CORRECT?

04:12PM 2 A. YES.

04:12PM 3 Q. AND YOU SAID THAT YOU DELEGATED TO A QC MANAGER; RIGHT?

04:13PM 4 A. YES.

04:13PM 5 Q. AND THAT PERSON'S NAME WAS LONGLY GEE, WAS IT NOT?

04:13PM 6 A. YES.

04:13PM 7 Q. OKAY. AND SO MR. GEE WAS RESPONSIBLE FOR REVIEWING AND

04:13PM 8 ANALYZING ALL OF THE QC WORK THAT WAS DONE WITHIN THE LAB;

04:13PM 9 CORRECT?

04:13PM 10 A. CORRECT.

04:13PM 11 Q. AND AS A LAB DIRECTOR, YOU UNDERSTAND THE IMPORTANCE OF

04:13PM 12 QC; RIGHT?

04:13PM 13 A. YES.

04:13PM 14 Q. QC IS PERFORMED TO MAKE SURE THAT THE INSTRUMENT IS

04:13PM 15 OPERATING RELIABLY; RIGHT?

04:13PM 16 A. YES.

04:13PM 17 Q. AND QC TESTS THE PRECISION ON THE DEVICE; RIGHT?

04:13PM 18 A. IT DEPENDS ON WHAT KIND OF TEST IT IS. IT MIGHT.

04:13PM 19 Q. OKAY. BUT IT'S IMPORTANT IN THE OPERATION OF THE LAB;

04:13PM 20 RIGHT?

04:13PM 21 A. YES.

04:13PM 22 Q. AND THAT WAS DELEGATED TO MR. GEE; CORRECT?

04:13PM 23 A. YES.

04:13PM 24 THE COURT: SHOULD WE BREAK NOW?

04:13PM 25 MS. WALSH: PROBABLY, YEAH.

04:13PM 1 THE COURT: LET'S DO THAT. LET'S TAKE OUR AFTERNOON
04:13PM 2 BREAK, LADIES AND GENTLEMEN.
04:13PM 3 WE'LL SEE YOU NEXT FRIDAY, PLEASE -- NOT NEXT FRIDAY, THIS
04:14PM 4 COMING FRIDAY.
04:14PM 5 (LAUGHTER.)
04:14PM 6 THE COURT: LANGUAGE IS SO IMPORTANT, ISN'T IT?
04:14PM 7 WE'LL SEE YOU FRIDAY NEXT, WHICH MEANS THIS FRIDAY. AT
04:14PM 8 9:00 O'CLOCK WE'LL START, LADIES AND GENTLEMEN.
04:14PM 9 LET ME REMIND YOU OF THE ADMONITION. IT'S STILL IN PLACE.
04:14PM 10 DO NOT DISCUSS OR IN ANY WAY ATTEMPT TO LEARN ANYTHING ABOUT
04:14PM 11 THIS CASE.
04:14PM 12 HAVE A GOOD DAY OFF, AND WE'LL SEE YOU FRIDAY MORNING.
04:14PM 13 THANK YOU.
04:14PM 14 AND WE'LL SEE YOU BACK FRIDAY MORNING, DOCTOR.
04:14PM 15 THANK YOU.
04:14PM 16 (JURY OUT AT 4:14 P.M.)
04:14PM 17 THE COURT: PLEASE BE SEATED. THANK YOU.
04:14PM 18 THE RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT FOR THE
04:14PM 19 DAY. DR. SAWYER HAS LEFT THE COURTROOM.
04:14PM 20 COUNSEL, SCHEDULING FOR FRIDAY?
04:15PM 21 MS. WALSH, I EXPECT THAT YOU'LL FINISH YOUR CROSS BY THE
04:15PM 22 BREAK DO YOU THINK, OUR MORNING BREAK?
04:15PM 23 MS. WALSH: YES, I THINK SO.
04:15PM 24 THE COURT: RIGHT.
04:15PM 25 MR. SCHENK: YES. THANK YOU, YOUR HONOR.

04:15PM 1 WE HAVE ONE MORE INVESTOR TO CALL AFTER DR. SAWYER.

04:15PM 2 AND I MENTIONED THE COVID ISSUE WITH ANOTHER WITNESS.

04:15PM 3 WE'VE ALREADY GIVEN NOTICE TO THE DEFENSE OF THE WITNESSES

04:15PM 4 THAT WE'LL CALL IN PLACE OR INSTEAD OF THAT WITNESS.

04:15PM 5 THE COURT: OKAY.

04:15PM 6 MR. SCHENK: SO WE'VE MADE TRAVEL ARRANGEMENTS FOR

04:15PM 7 THEM. WE'RE GOING TO FLY IN SEVERAL ADDITIONAL WITNESSES THAT

04:15PM 8 WE THINK SHOULD COVER A GOOD CHUNK OF FRIDAY. IT'S A LITTLE

04:15PM 9 BIT HARD TO PREDICT EXACTLY HOW MUCH, BUT WE'LL CERTAINLY MAKE

04:15PM 10 USE OF AS MUCH TIME AS POSSIBLE ON FRIDAY.

04:15PM 11 THE COURT: OKAY. THAT SOUNDS GREAT.

04:15PM 12 MS. WALSH: THANK YOU.

04:15PM 13 THE COURT: THANKS. WE'LL SEE YOU --

04:15PM 14 MR. BOSTIC: YOUR HONOR --

04:15PM 15 THE COURT: MR. BOSTIC.

04:15PM 16 MR. BOSTIC: JUST A BRIEF HOUSEKEEPING ISSUE BEFORE

04:16PM 17 I FORGET.

04:16PM 18 DURING THE CROSS-EXAMINATION OF MR. EISENMAN, EXHIBIT 3530

04:16PM 19 WAS DISCUSSED AND I JUMPED UP AND SAID THAT IT WASN'T IN

04:16PM 20 EVIDENCE.

04:16PM 21 I WAS CORRECTED THAT IT WAS.

04:16PM 22 AND AT THE RISK OF BEING CORRECTED A SECOND TIME, I THINK

04:16PM 23 THAT WHAT WAS PREVIOUSLY ADMITTED WERE PAGES 1 THROUGH 24 AND

04:16PM 24 32.

04:16PM 25 AND TODAY I THINK PAGE 42 WAS ALSO PUBLISHED.

04:16PM 1 THAT'S NO PROBLEM, AND THE GOVERNMENT DOESN'T OBJECT TO
04:16PM 2 PAGE 42 BEING ADMITTED INTO EVIDENCE IF I'M RIGHT ABOUT THAT,
04:16PM 3 BUT IT MIGHT BE SOMETHING THAT WE NEED TO CLARIFY FOR THE
04:16PM 4 RECORD.

04:16PM 5 THE COURT: OKAY. THANK YOU.

04:16PM 6 MS. WALSH: CAN YOU REMIND ME OF THE NUMBER? 35 --

04:16PM 7 MR. BOSTIC: 3530.

04:16PM 8 THE COURT: THIS WAS THE STOCK PURCHASE AGREEMENT I
04:16PM 9 BELIEVE.

04:16PM 10 MS. WALSH: RIGHT.

04:16PM 11 MR. BOSTIC: IT HAS SIGNATURE PAGES FOR MULTIPLE
04:17PM 12 INVESTORS.

04:17PM 13 THE COURT: RIGHT.

04:17PM 14 MR. BOSTIC: I THINK ONLY ONE OF THOSE SIGNATURE
04:17PM 15 PAGES WAS PREVIOUSLY ADMITTED.

04:17PM 16 THE COURT: RIGHT. AS I RECALL, THE DOCUMENT DOES
04:17PM 17 HAVE SIGNATURE PAGES FOR MANY OF THE INVESTORS. GEORGE SHULTZ
04:17PM 18 WAS ON THERE, AND OTHERS, I THINK.

04:17PM 19 BUT NOT --

04:17PM 20 MS. WALSH: YES, YOUR HONOR.

04:17PM 21 MY ONLY INTENT REALLY WAS TO GET IN MR. EISENMAN'S
04:17PM 22 SIGNATURE, AND THEN THE PAGE 42 SHOWING THE NUMBER OF SHARES
04:17PM 23 AND THE TOTAL AMOUNT PAID FOR THOSE SHARES.

04:17PM 24 THE COURT: OKAY.

04:17PM 25 MS. WALSH: SO I'M NOT SURE. WE CAN PREPARE A NEW

04:17PM 1 EXHIBIT, AND MAYBE REOFFER THE NEW EXHIBIT. I'M NOT SURE HOW
04:17PM 2 TO CURE THE ISSUE.

04:17PM 3 THE COURT: WELL, IF JUST THOSE PAGES WERE ADMITTED,
04:17PM 4 I DON'T THINK WE NEED TO -- WE CAN PULL THOSE PAGES OUT.
04:17PM 5 WHATEVER THE JURY GETS ELECTRONICALLY, IT WILL BE JUST THOSE
04:17PM 6 PARTICULAR PAGES, IF THAT'S ALL RIGHT WITH YOU.

04:17PM 7 MS. WALSH: THAT'S FINE WITH US.

04:17PM 8 MR. BOSTIC: YES, YOUR HONOR. AS LONG AS THE RECORD
04:18PM 9 REFLECTS WHICH PAGES WERE ADMITTED, THEN WE'LL MAKE SURE THAT
04:18PM 10 THE FINAL VERSION THAT GOES BACK TO THE JURY HAS THOSE PAGES.

04:18PM 11 THE COURT: RIGHT. RIGHT.

04:18PM 12 MS. WALSH: I GUESS I -- I'M NOT SURE IF MR. BOSTIC
04:18PM 13 SAID PAGE 42 WAS NOT ADMITTED OR IT WAS.

04:18PM 14 MR. BOSTIC: MY UNDERSTANDING WAS THAT IT WAS NOT
04:18PM 15 PREVIOUSLY ADMITTED, AND IT WAS NOT ADMITTED TODAY FORMALLY.

04:18PM 16 MS. WALSH: SO I WOULD LIKE TO ADMIT THAT PAGE.

04:18PM 17 THE COURT: OKAY.

04:18PM 18 MS. WALSH: WE CAN DO THAT IN THE PRESENCE OF THE
04:18PM 19 JURY.

04:18PM 20 THE COURT: RIGHT. I THINK WE SHOULD. WE'LL DO
04:18PM 21 THAT TOMORROW MORNING, OR EXCUSE ME, FRIDAY NEXT MORNING.

04:18PM 22 MS. WALSH: SURE.

04:18PM 23 THE COURT: WE'LL DO THAT. JUST REMIND ME OF THAT
04:18PM 24 AND WE'LL JUST TAKE CARE OF THAT HOUSEKEEPING.

04:18PM 25 MS. WALSH: YES.

04:18PM 1 THE COURT: AND THEN FOR THE JURY EXHIBITS THEN,
04:18PM 2 WHENEVER THEY GO BACK, THEY WILL BE THE ELECTRONIC VERSION,
04:18PM 3 WHATEVER THOSE PAGES ARE, FOUR OR FIVE PAGES.

04:18PM 4 MR. BOSTIC: YES, YOUR HONOR.

04:18PM 5 THE COURT: OKAY. GREAT.

04:18PM 6 MS. WALSH: THANK YOU.

04:18PM 7 THE COURT: THANK YOU.

04:18PM 8 (COURT ADJOURNED AT 4:18 P.M.)

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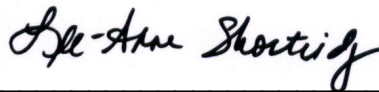
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: MAY 11, 2022